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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Note by the High Commissioner for Human Rights transmitting the report of the International Commission of Inquiry for Togo

GE.01-11525 (E)

1. At its fifty-sixth session, the attention of the Commission on Human Rights was drawn, under agenda item 9, to the statement delivered on 20 August 1999 by the Chairperson of the fifty-first session of the Sub-Commission on the Promotion and Protection of Human Rights concerning the situation of human rights in Togo. To give effect to that statement, the International Commission of Inquiry for Togo was established on 7 June 2000, under the auspices of the United Nations and the Organization of African Unity, at the request of the Government of Togo. It should be recalled that, at the Sub-Commission's request, a note by the Secretary-General (E/CN.4/Sub.2/2000/8) on the establishment of the International Commission of Inquiry for Togo was circulated at its fifty-second session, under the agenda item relating to the question of the violation of human rights and fundamental freedoms in all countries.

2. On 26 December 2000, the International Commission of Inquiry transmitted its report to the Secretary-General of the United Nations and the Secretary-General of the Organization of African Unity. Referring to paragraphs 74 and 75 of the report, the two Secretaries-General requested the High Commissioner to bring the report to the attention of the Commission on Human Rights at its fifty-seventh session. The Secretaries-General requested that the comments of the Government of Togo and Amnesty International concerning the report should also be made available to the Commission on Human Rights (see addenda 1 and 2 to this document).

Preliminary distribution

REPORT OF THE INTERNATIONAL COMMISSION OF INQUIRY FOR TOGO

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1. Statement by the Chairperson of the Sub-Commission on the Promotion and Protection of Human Rights

2. Rules of procedure of the Commission

I. INTRODUCTION

A. Mandate

1. On 7 June 2000, Mr. Kofi Annan and Mr. Salim A. Salim, Secretary-General of the United Nations and Secretary-General of the Organization of African Unity respectively, issued a joint press release concerning the establishment, under the auspices of both organizations, of an international commission of inquiry to verify the truth of allegations contained in an Amnesty International report of 5 May 1999, that hundreds of extrajudicial executions had taken place in Togo during 1998, and to report thereon to the two Secretaries-General.

B. Composition

2. The International Commission of Inquiry for Togo (hereinafter "the Commission") is composed of three international experts appointed through mutual agreement by the Secretaries-General of the United Nations and the Organization of African Unity: Mr. Mahamat Hassan Abakar (Chad), Chairman, Mr. Paulo Sergio Pinheiro (Brazil), member, and Mr. Issaka Souna (Niger), member.

C. Methods of work

3. The Commission conducted its inquiry in conformity with relevant international norms, in particular the international human rights instruments in force. The Commission conducted a field mission to Togo and neighbouring countries for the purpose of verifying the allegations in question. In that context, it called on institutions and individuals with a view to collecting the testimony, information and documents needed for the discharge of its mandate. Before leaving on mission, on 12 September 2000 the Commission distributed, through the United Nations offices in Togo, Benin and Ghana, a public information note on its mandate and methods of work, questions relating to the protection of witnesses and any other information sources, and the undertaking of the Government of Togo to cooperate with it. The information note also called on persons wishing to provide the Commission with information, testimony, recommendations or opinions to do so, either orally (interview or hearing by the Commission), or in writing, or by any other means they deemed to be appropriate, adequate and safe. The Commission indicated that such information might be communicated to it directly during its field inquiries, in Togo or neighbouring countries or any other countries it might visit, or to its secretariat at the Office of the United Nations High Commissioner for Human Rights, Palais Wilson, Geneva. A copy of the Commission's rules of procedure was attached to the public information note.

4. The Commission accordingly heard the representatives of the Governments of Togo and Benin, the heads and members of several foreign diplomatic missions accredited in both countries, representatives of international and national human rights organizations, journalists and more than 60 witnesses, in both Geneva and the field. The Commission was also given numerous documents, photographs and pieces of evidence by the persons and institutions concerned.

5. The Commission heard the representatives of Amnesty International on two occasions, at its first and second meetings, held in Geneva in August and September 2000. On both occasions, it also held working meetings with representatives of the Government of Togo. In the field, the Commission held several working meetings with the National Commission set up by the Government of Togo to serve as liaison body. Exchanges between the two Commissions made it possible to clarify certain problems which arose during the field inquiry.

D. Meetings of the Commission in Geneva

6. The Commission began its work on 31 July, and held three meetings in Geneva.

7. The Commission held its first meeting from 31 July to 4 August 2000. It adopted its rules of procedure at that meeting. The rules of procedure contain information relating to its mandate; the solemn declaration made by its members; their immunities and privileges; the relevant international norms; confidentiality of information and protection of witnesses; cooperation with the United Nations, the Organization of African Unity and the Government of Togo; meetings, powers of the Chairman and decisions; the Commission's secretariat and the drafting of its report (see annex 2). During its first meeting, the Commission held exchanges of views with several organizations and with permanent missions to the United Nations Office at Geneva. It heard the delegations of the Government of Togo and Amnesty International.

8. The Commission held its second meeting in Geneva from 18 to 22 September 2000, with a view to preparing its field mission. It took that opportunity to meet with representatives of several bodies and organizations, such as Amnesty International, the International Committee of the Red Cross and the Office of the United Nations High Commissioner for Refugees. It also held a comprehensive dialogue with the delegation of Togo, relating especially to prior conditions for the field mission. The Commission took advantage of its stay in Geneva, which was extended to 11 November 2000 pending a satisfactory response from the Government of Togo to its requests, to settle administrative and logistical problems in abeyance.

9. The Commission held its third meeting in Geneva from 15 to 22 December 2000. At that meeting it finalized and adopted this report, which was drafted following a five-week field mission to Togo and neighbouring countries.

E. Mission to Togo and neighbouring countries

10. The Commission went first to Togo, where it conducted a first visit from 11 to 19 November. It then went to Benin, essentially Cotonou (from 19 to 24 November 2000) and the Mono region on the Togolese border (24 November-2 December 2000), and to Ghana, in the Volta region on the Togolese border (2-4 December 2000). The Commission ended its mission with a second visit to Togo, from 4 to 12 December 2000.

11. The Commission wishes to thank the authorities of Togo, Benin and Ghana for their cooperation. It also wishes to thank the United Nations offices in Togo, Benin and Ghana for providing it with support for the proper functioning of its field mission. The mission enabled it to collect the data and information necessary for the discharge of its mandate.

II. CONTEXT

12. The event which gave rise to the inquiry was the controversy raised by the Amnesty International report of 5 May 1999 on the situation of human rights in Togo. In response to the allegations contained on page 26 of the report, the Government of Togo proposed that an independent international mission of inquiry should be established to verify the truth of the allegations; the proposal was endorsed by the Sub-Commission on the Promotion and Protection of Human Rights and implemented jointly by the United Nations and Organization of African Unity.

A. Allegations contained in the Amnesty International report

13. On page 26 of its report of 5 May 1999, entitled "Togo, Rule of Terror", Amnesty International stated the following:

> "In June 1998, during the Presidential election campaign, and after the results were announced, hundreds of people, including members of the military, were extrajudicially executed. Bodies were retrieved from the beaches of Togo and Benin and corpses were seen at sea for at least four days around Benin. During its investigative visit, the Amnesty International delegation was able to question numerous individuals, including Beninese and Togolese fishermen, as well as Togolese farm workers who were working in the fields. Those questioned all told of unusual movements of planes and helicopters sometimes flying at very low altitude out to sea. Former soldiers, members of the paracommando regiment, who had sought refuge in Benin, recognized the characteristic sound of Buffalo aircraft. Others questioned also indicated that bodies had been recovered on the beaches, shortly after planes had passed over. One of the fishermen told the following story: 'Eight kilometres from the beach at Ague [in Benin], hundreds of bodies were floating out at sea'; other witnesses confirmed that bodies had been seen for three days at that same place. Another fisherman had filled in the details: 'When I was taking in my nets, I found a corpse among the fish; some corpses were shackled and others were wearing uniforms'. Other fishermen, particularly at Grandpopo in Benin, gave us the same information and specified that the victims' bodies had bullet wounds and that some soldiers were also shackled."

B. Reactions of the Government of Togo

14. The Government of Togo rejected the Amnesty International report, which it called a text "rife with gross fabrications, manipulations and false testimony". It then brought judicial proceedings against Mr. Pierre Sané, Secretary-General of Amnesty International, and against several individuals suspected of having cooperated in the Amnesty International inquiry, for "offence against honour, dissemination of false information, incitement to revolt, offence against national security, complicity to commit an offence against honour, complicity to disseminate false information, complicity to incite to revolt and complicity to commit an offence against national security".

15. The Government of Togo also published a white paper on the allegations contained in the Amnesty International report, which it refuted as follows:

> "Concerning the hundreds of bodies
>
> [...]
>
> With regard to the events cited, the Government of Togo does not acknowledge, in any way whatsoever, such an obvious lie, which does Amnesty International no credit. Does Amnesty International consider the fact that the Government of Togo possesses a Buffalo aircraft, helicopters and shackles to be scientific evidence excluding all doubt? For Amnesty International's information, during the period mentioned in the report, i.e. the June 1998 presidential elections, the Buffalo aircraft in question was not operational. Moreover, how can "executions of hundreds of persons" take place in so tiny a country as Togo without being widely publicized in the national media and the international media present in the country, particularly in the capital, when the accusations of a mere journalist raise such an uproar? How can hundreds of persons be executed without even one of the alleged victims' families expressing its grief, without hearses filling the country's streets? How does Amnesty International explain the fact that an event such as hundreds of bodies washing up on the beaches of Benin never drew a reaction by either the authorities of Benin or the wide range of press organs freely operating in the country? Finally, how does it explain the fact that no diplomatic mission was informed of the hundreds of bodies that washed up on our beaches? Can Amnesty International perform the magic feat of explaining to the Government what happened to those hundreds of bodies, when, where and how they were buried?"

16. Finally, the Government of Togo proposed that an international commission of inquiry should be established to elucidate the controversy raised by the allegations that several hundred people had been victims of extrajudicial executions in Togo following the 1998 elections, and that their bodies had been found by fishermen on the beaches of Togo and Benin and at sea off the Benin coast.

17. On leaving Lomé, the Commission received from the Government of Togo a series of four letters attributed to Mr. Gilchrist Olympio, in support of its conviction that Mr. Olympio and Mr. Pierre Sané had organized a "plot" to destabilize the Togolese Government. The Commission transmitted the letters to the Secretary-General of the Union des forces de changement (UFC) in Lomé, and to Amnesty International, on returning to Geneva. Before finalizing this report, the Commission was informed by the President and Secretary-General of UFC and by Amnesty International that they rejected those allegations as groundless.

C. Sub-Commission on the Promotion and Protection of Human Rights

18. In the context of the Sub-Commission's consideration of the situation of human rights in Togo, its Chairperson made a statement on its behalf, dated 20 August 1999, in which he took note of the proposal of the Government of Togo concerning the establishment of an international commission of inquiry to elucidate the controversy between Amnesty International and itself.

He recommended that the Secretaries-General of the United Nations and Organization of African Unity help set up the commission and provide it with all the assistance it needed to discharge its mandate. He also asked the Government of Togo to cooperate fully with the Commission in order to ensure the proper conduct of the inquiry (see annex 1).

D. Joint action by the United Nations and the Organization of African Unity

19. Pursuant to the proposal of the Government of Togo and in accordance with the statement by the Chairperson of the Sub-Commission, the two Secretaries-General proceeded, as mentioned earlier, to set up the International Commission of Inquiry for Togo. Assistance was provided from the outset by the competent body of each organization, i.e. the United Nations High Commissioner for Human Rights and the Legal Division of the Organization of African Unity, as well as by the permanent mission of the Organization of African Unity to the United Nations Office at Geneva. Subsequently, the Office of the High Commissioner made available to the Commission a support team of four professional staff members, two secretaries and three security officers, who helped it to discharge its mandate in both Geneva and the field.

20. The Commission wishes to thank the Office of the United Nations High Commissioner for Human Rights for providing it with assistance in discharging its mandate, particularly with regard to the provision of a support team. It also wishes to thank the Organization of African Unity for its contribution to its work. It wishes to stress, however, that it alone is responsible for the observations and conclusions contained in this report.

E. Difficulties encountered by the Commission before its departure for the field

21. As mentioned earlier, the Commission was set up on 7 June 2000. It held its first meeting in Geneva from 31 July to 4 August. In accordance with the programme of activities adopted at the meeting, the Commission had planned to travel to Togo on 27 September. It was not able to do so until 11 November, or 1½ months later, which considerably delayed the beginning of its field activities.

22. Some difficulties did indeed arise, leading to a laborious dialogue between the Government of Togo and the Commission.

23. The first difficulties referred to the prior conditions set by the Commission for the conduct of its field mission. These related, on the one hand, to the withdrawal of the complaint lodged by the Togolese authorities against Mr. Pierre Sané and persons suspected of having cooperated with the Amnesty International inquiry and, on the other, to the provision of written guarantees by the Togolese authorities concerning the protection of potential Commission witnesses against any legal proceedings or reprisals subsequent to the field mission. The provision of such guarantees and the suspension of the above-mentioned legal proceedings were a necessary condition for the inquiry to be conducted in a calm, objective and effective manner.

24. Concerning in particular the withdrawal of the proceedings against Mr. Pierre Sané, the Commission also based itself on a letter dated 12 March 2000 from President Gnassingbé Eyadema to the Secretary-General of the United Nations, undertaking to withdraw the proceedings against Mr. Sané, "when the Commission starts its investigations on the field". The Commission reiterated its request in this connection to the Government of Togo at its first meetings in August and September 2000 and in several telephone conversations which its Chairman held with the competent Togolese authorities, in particular the Prime Minister. The Commission also referred to its requirements in letters from its Chairman to the Prime Minister of Togo on 26 and 28 September and 6 October 2000 respectively. The final replies of the Government of Togo to those letters, regarding the withdrawal of the proceedings against Mr. Sané "and company" and the guarantee that no one who testified before the Commission would be prosecuted, did not reach the Commission until 10 and 16 October 2000. On 23 October 2000, the Government of Togo wrote to the Chairman of the Commission reiterating its confidence, as follows:

> "We have taken note of the information relating to a mission of inquiry to Burundi which you conducted during 1994 for Amnesty International.
>
> We wish to express our great satisfaction at receiving this information from you spontaneously, in a gesture which we appreciate and one which denotes great intellectual probity and a strong sense of responsibility on your part.
>
> Given the brief nature of your mission to Burundi and the fact the mandate involved was a specific and very limited one which did not make you a staff member of Amnesty International or in any way subordinate to that body, we would like to confirm that we have no reservations whatsoever to your presence on this Commission."

25. Subsequent difficulties concerned reservations and objections entered by the Government of Togo concerning the composition of the Commission's support team. It insisted that a quota of support team members should be reserved for the Office of the Secretary-General of the Organization of African Unity in order to "reflect the joint nature of the Commission" and also demanded that three people chosen for the support team should be rejected. Concerning the first point, talks held with the Office of the Secretary-General of Organization of African Unity indicated that the absence of its officials on the support team would in no way mar the joint nature of the Commission and, concerning the second point, the Commission was obliged to replace the "rejected" members of the support team in order to avoid its activities coming to a standstill. It did so only for that reason, reiterating the principle that the Commission alone was responsible for choosing its staff.

26. On arriving in Togo, the Commission was given a document attesting to the suspension of proceedings against Mr. Sané and the others, i.e. an order dated 10 November 2000 from the senior judge of the Lomé Court on application of the same date by the Public Prosecutor.

III. FIELD MISSION

27. The field mission enabled the Commission to have access to several information sources, to collect testimony and documents concerning the allegations at issue between the Government of Togo and Amnesty International and to conduct on-site visits.

A. Information sources

28. The information sources basically consisted of testimony. The Commission did, however, have access to documentary sources and was able to conduct on-site visits in certain cases.

1. Documentary sources

29. The documents collected consist essentially of newspapers of the day and of reports by human rights associations and institutions, journalists' trade unions, political parties and the Government of Togo itself. Amnesty International also produced the documentation on which its report was based.

30. The Commission also collected several documents consisting of reports by official entities and non-governmental organizations and by diplomatic missions accredited in Togo and Benin. It also had access to clippings from the private press concerning the matter under inquiry. Of the documents in question, mention should be made of those which were drawn up following a field inquiry into the allegations, namely:

(a) The white paper of the Government of Togo concerning Amnesty International's allegations;

(b) The disputed Amnesty International report of 5 May 1999, a subsequent report by the same organization entitled "Togo: Time for Accountability" (AI: AFR 57/22/99/F, 20 July 1999) and a confidential document entitled "Togo: rappel de l'exposé oral fait par la delegation d'Amnesty International devant la Commission d'enquête internationale sur le Togo, le vendredi 22 septembre 2000 à Genève" ("Togo: Statement delivered by the Amnesty International delegation before the International Commission of Inquiry for Togo, Friday, 22 September 2000 in Geneva") (AI: AFR 57/13/00/F, October 2000);

(c) Report (briefing) on the inquiry conducted by the Ministry of Defence of Benin (Department of Protection, Security and Defence), prepared in July 2000.

31. The Commission also consulted numerous articles from the press, including one from the Togolese newspaper l'Aurore, dated 18 August 2000, and one from the French daily Le Figaro, dated 1 July 1999.

2. On-site visits

32. As stated earlier, the Amnesty International report refers to hundreds of bodies found at sea and on the beaches of Togo and Benin, several of which had allegedly been buried by local fishermen and villagers. To verify those allegations, the Commission conducted on-site visits to the sites concerned, as follows:

(a) Lomé, from 13 to 18 November 2000 and 4 to 12 December 2000;

(b) Cotonou, Benin, from 19 to 23 November 2000;

(c) Grand-Popo, Agoué and Ouidah, Benin, from 24 November to 2 December 2000.

The Commission visited several communities referred to in the allegations. These included the villages of Ayi-Guinnou and Avlo (25 November), Agonnêkamé (26 November), Zogbedji-Plage (27 November) Agoué (28 November) and Ayido-Plage (30 November). On those occasions it heard nearly 30 fishermen in all and visited a few graves located directly on the beaches;

(d) Agbozume, Ghana, in the Volta region on the Togolese border, from 2 to 4 December 2000; and

(e) The Togolese communities of Afagnan (6 December 2000), Dokpohoé, in the cantons of Sandomé (7 December 2000), Sokodé and Kara-Sud (9 December 2000).

33. These visits were supplemented by consultation of the registers (police diaries) of several gendarmerie brigades with territorial competence to register accidental deaths (drownings, traffic accidents, hunting accidents, etc.) occurring in these communities. The Commission was given access to the registers of the brigades of Grand-Popo (27 November 2000) and Agoué (28 November 2000). Lacking prior authorization from the Public Prosecutor, the Deputy Commander of the Ouidah brigade did not allow the Commission to consult its register.

34. As Amnesty International's allegations also referred to the use of aircraft, including a Buffalo aircraft, to dump bodies at sea, the Commission travelled to the Lomé-Tonkoin military airport on 17 November 2000, to visit the military aircraft there and requested and obtained technical information on their functioning. The information concerned the aircraft's operational features, in particular their possibilities of dumping bodies in flight. To supplement this information, the Commission also travelled to the premises of the Agency for Air Navigation Safety in Africa and Madagascar (ASECNA), in Lomé, on 11 December 2000, where it obtained information concerning flights, including local flights, made by civil and military aircraft from the Lomé-Tonkoin airport from 1 January to 31 December 1998. This information concerns the aircrafts' take-off and landing times.

3. Testimony

35. The Commission collected more than 1,000 accounts in all. These accounts may be divided into two categories. The first consists of testimony from persons who state that they have seen or buried corpses washed up by the sea, in Benin. These eyewitnesses are basically fishermen and other villagers living in the communities located along the adjacent sea coasts of Togo and Benin, from Grand-Popo to Ouidah. The second category of testimony consists of statements and opinions from persons with knowledge of the allegations. This category includes diplomats, governmental, prefectoral and communal leaders, representatives of specialized agencies of the United Nations system, journalists, teachers, human rights activists, political activists and any other persons who spoke with the Commission either spontaneously or at its request.

B. Attempts to bribe witnesses in Benin

36. During its inquiries around Benin, especially in the sub-prefectures of Grand-Popo and Agoué, the Commission was confronted with manoeuvres aimed at intimidating and bribing the fishermen whom it wished to question. To be sure, this was apparently not the first attempt by the Togolese authorities to cover up the tracks. The documentary sources which the Commission had to study for 1999 and the testimony in this connection suggest that the Government of Togo had already tried earlier to bribe Beninese journalists and Beninese citizens living in the areas where the bodies had been washed up. Similar incidents had been observed previously in June 1999 - testimony of district heads and some of the people living in Beninese localities bordering on Togo - and had led in particular to a protest march by the people of Grand-Popo.

1. Testimony of district heads and other Beninese nationals to the Togolese press

37. Following the publication of the Amnesty International report in May 1999, some Grand-Popo (Benin) district heads and other natives of the same region appeared on Togolese television to refute the claims of the "discovery of dead bodies" out at sea and on some beaches in Benin. On Saturday, 22 May 1999, four district heads of Grand-Popo commune went to Lomé, without the knowledge of the local administrative authorities and of the people they were supposed to represent, to testify on Togolese television and radio that they had never seen bodies washed up on the beaches. The same sources report that these district heads were received by President Eyadéma and were paid by him for their testimony. When they made their statements on Togolese television, these district heads and the other persons concerned appeared in traditional costumes normally worn by the Popo community for their main festivals, especially at Whitsun, during reunions of the members of NONVICHA (an association founded in 1923, representing all the Popos from Benin and abroad). Their testimony reportedly caused consternation in the Popo community and profound indignation among its leaders and prominent figures, who summoned the persons concerned in order to question them and reprimand them publicly. Popular discontent was furthermore expressed in a protest march organized at

Grand-Popo on 9 June 1999. This march ended with the handing in of a petition to the sub-prefect which soundly condemned these actions and called for the dismissal of the district heads concerned. Four of the district heads were, in fact, suspended by the sub-prefect for having gone to Togo without higher authorization.

38. When asked whether these district heads and other persons were censured for having testified in Togo with the symbols of the Popo community or for having lied, the prominent figures and witnesses questioned gave both reasons.

2. The media

39. In 1999, after the publication of the report of the Beninese Human Rights League on the affair of the "Togolese bodies" (a report that confirmed the discovery of Togolese bodies, which it estimated as numbering about 100), the Togolese authorities reportedly approached some Beninese journalists and asked them to deny the League's information subject to remuneration. These attempts to bribe Beninese journalists to discredit the report of the Beninese Human Rights League apparently failed and were unmasked by the Beninese newspaper Le Progrès, in its issue 277 of 27 July 1999, in an article entitled "Eyadéma wants to bribe the Beninese press". Benin's Observatory for Good Practice and Ethics in the Media (ODEM) looked into the case and took sanctions against the journalists implicated in this affair.

3. The fishermen

40. Some fishermen likely to give evidence to the Commission were approached by Mr. Philippe Adahoumehé, an agronomist working for an NGO based in Comé, Benin, who dissuaded them - by bribery (money) or threats - from cooperating with the Commission. Some witnesses admitted to the Commission that they had received sums of money amounting to CFAF 3,000 not to give evidence and others, who had declined the offer, were threatened. Mr. Adahoumehé reportedly told them: "Be careful, your names are already in the office of the President of the Republic", by which he meant "the President of the Republic of Benin". On Saturday, 25 November 2000, the Commission went to the village of Ayi-Guinnou, where it was to hear testimony from a group of fishermen. Some witnesses revealed at this meeting that, two days before the Commission's arrival, Mr. Adahoumehé had given the fishermen money to deny having seen any dead bodies. Among the fishermen questioned, one witness admitted having received money from Mr. Adahoumehé, but affirmed that this had not prevented him from telling the truth about what he had seen.

41. The Commission informed the Grand-Popo sub-prefect about the actions of this individual, wondering also for whom and at whose prompting he was acting. The sub-prefect told the Commission that he had summoned and questioned him, but the man had denied that his actions were in any way related to the Commission's inquiry. He stated that the handing out of the money was part of his work of supervising a group of fishermen. The Commission is not satisfied with this answer. Indeed, it noted an increasing lack of cooperation on the part of the people whom it had arranged to meet and who had promised to cooperate. Most of those not yet questioned had withdrawn their earlier offers to cooperate with the Commission. The Commission also observed that its movements in the villages of this area were preceded or

followed by visits from Mr. Adahoumehé. The Commission requested the Beninese authorities to provide for the safety of the people who had cooperated with it in this area, especially those who had received threats from Mr. Adahoumehé, and stated that it would hold him responsible for any incident that might occur after the mission.

IV. ALLEGATIONS OF EXTRAJUDICIAL EXECUTIONS IN 1998

42. The Amnesty International report of 5 May 1999 (see para. 13) alleges, inter alia, on page 26 that some bodies were found on the beaches of Togo and Benin and that others were seen at sea off the coast of Benin for at least four days. The Togolese Government has itself published a white paper (see para. 15) rejecting these allegations. Since these allegations concerned the beaches of Benin, the Commission went to that country, in particular visiting the sub-prefectures of Grand-Popo, which borders on Togo, and Ouidah. It stayed there from 24 November to 2 December 2000. The members of the Commission visited numerous fishing villages extending along the shores of the ocean up to the Togolese border to the west.

43. In addition to the fishermen, the Commission also heard the accounts of Beninese officials and other persons.

44. These many witness accounts, while gathered from different places, agree on the following points.

A. Allegations concerning the discovery of bodies on the "high seas" and bodies recovered and buried by fishermen

45. The Commission went to the Togolese and Beninese beaches concerned. Around these beaches, there are fishermen organized in villages and engaged in small-scale fishing. Some villages have existed for more than a century. The communities living in these villages generally speak the same language and have relatives on both sides of the Benin-Togo border. Some Ghanaian nationals are also to be found in these villages. These communities all seem to live in harmony. Some Togolese refugees share the fate of their Beninese "brothers". Many have returned home, while others have settled in Benin.

46. In general, the Commission's arrival was welcomed and a willingness to cooperate was perceptible, although fear of reprisals in some cases did not allow everyone wishing to cooperate with the Commission to do so.

47. Several graves where the fishermen had reportedly buried some of the dead bodies found were shown to the Commission. The Commission was unable to exhume the bodies owing to a lack of human and scientific resources.

1. Bodies discovered on the "high seas"

48. It should be made clear that the term "high seas" is used by the fishermen to mean an offshore area between 10 and 20 km from the coast. It does not correspond to the term "high seas" as defined by the United Nations Convention on the Law of the Sea concluded on 10 December 1982.

49. The many witness statements gathered are concordant: during part of 1998, several fishermen reportedly saw a large number of dead bodies floating while they were fishing on the "high seas". On discovering these bodies, some fishermen took fright and for a while reportedly stopped going out to fish or avoided going onto the "high seas" and simply kept close to the shore. It would appear from the descriptions given that some bodies were found almost naked, and others clothed, most of them being in an advanced state of decomposition. The discovery of these dead bodies at the time became a subject of conversation and a cause for concern throughout the area.

50. When the Commission raised the problem of the number of dead bodies, however, the estimates given by the fishermen differed. When asked by the Commission, "Approximately how many bodies did you see?", some answered "many", others estimated that they had seen about 60 bodies, and still others spoke of 100 or 150 bodies. No group of fishermen (whose boats carry 7 to 15) apparently had the courage or presence of mind to make an actual count of the floating bodies. The first reaction of the fishermen on seeing this frightening spectacle was reportedly to leave the area and make their way back to their villages.

51. The discovery of dead bodies on the "high seas" seems to be corroborated by concordant testimony. However, it would be risky for the Commission to put forward any figure to determine the exact number. Furthermore, concerning the allegations of the use of aircraft to dump bodies at sea, the Commission is unable, with the information currently in its possession, either to confirm or to dismiss such claims.

2. Bodies recovered and buried by fishermen

52. The Commission gathered numerous concordant and consistent witness accounts about the unusually large number of unknown bodies said to have been recovered on the coast and buried by fishermen during the period of 1998 in question. The fishermen took the Commission to the various sites where these bodies had reportedly been buried. According to their accounts, at least two bodies were found with no heads. When asked whether the heads might have been eaten by fish, the fishermen stated categorically that the fish do not eat heads but only bite at arms and legs.

53. Some of the fishermen who regularly informed the local gendarmerie whenever they found a dead body apparently quickly tired of doing so. The gendarmerie would make a charge of CFAF 3,000 to 5,000 each time they were called out. Moreover, frequent summonses to the gendarmerie station are said to have deterred the fishermen from informing the authorities and they reportedly opted to bury the bodies in a hurry and secretly or else quite simply pushed them a little further out to sea so that they would wash up elsewhere.

54. For greater certainty, the Commission asked the fishermen whether the bodies were not those of inhabitants from neighbouring areas, i.e. Beninese. The fishermen were almost unanimous in saying that when there is a natural drowning or a fishing boat capsizes, the coastal dwellers from Togo to Benin alert one another, and the families concerned come and pick up the

bodies. In conclusion, according to the fishermen, the dead bodies found were not victims of natural drowning or the capsizing of a fishing boat. Since the bodies had been carried from west to east by the sea current, they could have come, according to these fishermen, only from Togo, which is situated geographically to the west of Benin.

B. Allegations of extrajudicial executions in the provinces of Togo

55. The Commission gathered numerous witness accounts relating to allegations of extrajudicial executions perpetrated inside Togo. Two cases of executions were, for example, reported to the Commission at Kara-Sud. Mr. Palanga N'Gamnouwe Germain, a chief forest warden, was allegedly summoned, with no apparent reason, on 24 April 1998 to the Kara gendarmerie station, where he is said to have been arrested and tortured severely for three days; he reportedly died there on 27 April. His arrest was allegedly due to remarks he had made to the gendarmes about the way in which they had parked a private vehicle on a bridge with the doors open. During the same period, Kéléou Pélé, arrested for death threats against his older brother by the Kara gendarmerie, reportedly died after three days of detention following the torture allegedly inflicted upon him.

56. The Commission presents below two summary tables listing the cases brought to its attention:

Table 1

Alleged victims of extrajudicial execution

Name	Date and place of birth or age	Occupation	Last known address	Date of death	Place of death
POMEAVOR Hoffia Messan	1968	Lottery ticket seller	Akato Avoemé (Lomé commune)	March 1998	Akato
TEKO ALLYN Anani	24.12.1957	Unskilled labourer	OTP-Kpeme (Togo)	November 1998	Reportedly killed outside his home
AMOUZOU Koffi	27 years		Aflao (Ketu district), Ghana	June 1998	Azaou
AHIAKPO Koffi Roger	30 years		Aflao (Ketu district), Ghana	June 1998	Azaou
KOSSI Kossi	25 years	Apprentice tailor	Afagnan	26.6.1998	Afagnan

Name	Date and place of birth or age	Occupation	Last known address	Date of death	Place of death
KEKGBÉ Koffi Mathieu		Photographer	Dokpohoé village	28.9.1998	Killed and disembowelled at his home
PALANGA N'GAMNOUWE Germain	31.7.1963, Lomé	Deputy forest warden	Kara, Chaminade district	27.4.1998	Died following torture at Kara gendarmerie station
KÉLÉOU Pelé	32 years		Kara	April 1998	Died following torture at Kara gendarmerie station

Table 2

Alleged deaths resulting from torture and ill-treatment in detention centres

Name	Date and place of birth or age	Occupation	Last known address	Date of death	Place of death
AHADJI Kodjo	35 years	Builder	Civil prison, Lomé	December 1998	Lomé
TENOU Koffi	65 years	Salesman	Civil prison, Lomé	June 1998	Lomé

C. Allegations of enforced disappearances

57. The Commission's visit to Ghana, close to the Togolese border, from 2 to 4 December 2000, enabled it to meet the next of kin of persons reported missing and/or summarily executed. During the various disturbances and clashes between the political opposition and the Government which Togo has witnessed in the 1990s, many opposition party members have sought refuge in neighbouring countries, including Ghana. For the most part, these refugees are young. Many of them have apparently interrupted their high school studies; they have no occupational training and no resources to fall back on. Some of them, in order to survive, are obliged to cross the border between Ghana and Togo in order to obtain small amounts of money and food from their families.

58. According to witness reports, young refugees have apparently been detained by the security forces when entering or leaving Togo. These arrests take the form of abductions by plain-clothes members of the security forces who use unmarked vehicles or vehicles without number plates. They generally operate under the command of Captain Yark.

59. Many people are afraid to try to discover the whereabouts of their relatives. Others have tried and have reportedly visited gendarmerie and police stations, to no avail. Many relatives have given up all hope of finding their kin alive once they have been arrested by the security forces.

60. The Commission has identified eight disappearances that took place in 1998. But it should be remembered that fear of reprisals has dissuaded many relatives from testifying.

Table 3

Missing persons

Name	Date and place of birth, age and origin	Occupation	Last known address	Date of arrest	Comments
AKAKPOSSA Koffi "Hitler"	1970, Lomé	Welder	Sanzulé refugee camp	22.12.1998	Not seen since arrest
ASSIONGBON Nicolas	1968, Lomé	Dressmaker	Avoemé - Lokotomey V/R, Ghana	October 1998	Not seen since arrest
DJIEWONE Adrisse "Ringo"	1970	Car parts salesman	Sikakope Denu, Ghana	10.8.1998	Not seen since arrest
EDOH Komlan	1980, Akato	Student	CEG Sanguera - Lomé	20.8.1998	Not seen since arrest
KOUNI Kodjo	1976, Akato	Painter	Akato Avoemé	20.8.1998	Not seen since arrest
HOMAWOO Yao	24 years	Forwarding agent	Gbenyedji district	8.2.1998	Not seen since arrest
AKAKPO Kokou	39 years, Lomé	Driver	Aflao - V/R - Ghana	7.2.1998	Not seen since arrest
SENYO Eugène	47 years, Paline	Driver	Ghana	7.2.1998	Arrested while travelling to Togo

61. As in the case of the alleged extrajudicial executions in the provinces, the Commission forwarded the list of arrested and missing persons to the Togolese authorities in a letter dated 12 December 2000 with a view to eliciting fuller information about the whereabouts of the individuals in question. As of the adoption of this report, no reply has been received.

V. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

62. The Commission began inquiries at its first meeting in Geneva, and completed them with its five-week field mission. The various avenues of inquiry pursued by the Commission have enabled it to draw the following conclusions.

63. The Commission is convinced that allegations of extrajudicial executions in Togo should be given due consideration. In the main, those singled out for execution have been members of opposition parties, but in some cases persons arrested for offences under ordinary law have also been executed. As to the perpetrators, various accounts seem to indicate that they are individuals associated with the security forces, the gendarmerie and the militias that operate in tandem with the authorities. In addition to extrajudicial, summary and arbitrary executions, these elements have engaged in torture and ill-treatment of detainees, and the rape and abduction of women in certain areas.

64. Moreover, armed militiamen closely linked to the authorities and often operating in groups, who reportedly enjoy the support and encouragement of the current Prime Minister, Mr. Agbeyomé Kodjo, are said to rape rural women in the presence of their husbands. They also abduct women and hand them over to other men for payment. In the course of these night-time raids, the militiamen also rob their victims.

65. Although they have been apprised of these allegations, the gendarmerie and the local authorities have been unable to put a stop to the crimes. Exasperated by this situation, rural people reported these incidents to the Ligue Togolaise des Droits de l'Homme (Togolese League for Human Rights, LTDH). Thus, approximately 12 women aged between 12 and 40 are reported to have been raped in Yoto Prefecture. No judicial proceedings have been set in motion as a result of the victims' complaints.

66. Regarding establishment of responsibilities, the Commission is of the opinion that a judicial inquiry at the national level is the only means of identifying the individuals responsible for these human rights violations.

67. Regarding allegations that bodies have been discovered by fisherman on the "high seas", the Commission has already stated that a number of accounts appear to substantiate these reports. However, the divergent estimates of the number of bodies seen by fishermen do not permit the Commission either to confirm or to deny an exact number. Nor can it confirm or deny, on the basis of the information currently available, allegations that aircraft have been used to dump bodies on the "high seas".

68. Nevertheless, the above-mentioned facts point to the existence of a systematic pattern of human rights violations in Togo in the course of 1998. Accordingly, the Commission wishes to submit the following recommendations.

B. Recommendations

69. Effective implementation of the Commission's recommendations should contribute to the establishment of an environment in Togo favourable to respect for human rights, the elucidation of the facts which this inquiry seeks to achieve, and the identification and possible prosecution of the alleged perpetrators of these violations, especially those involving extrajudicial executions. These recommendations are addressed, respectively, to the Secretaries-General of the United Nations and the Organization of African Unity, to the international community, to the Commission on Human Rights and the African Commission on Human and Peoples' Rights and to the Government of Togo.

1. To the Secretaries-General of the United Nations and the Organization of African Unity

70. The Commission strongly recommends the publication of this report.

71. The Commission also recommends the appointment of another team of experts to be entrusted with the task of verifying the technical data concerning the operation of aircraft used by the Togolese armed forces, the computerized records of flights at the Lomé-Tonkoin airport throughout 1998, and the trajectories of the bodies in the territorial sea adjacent to the coasts of Togo and Benin.

72. The Commission would have liked to have more time and facilities to elucidate most of the facts related to its inquiry. As this was not possible, it recommends that the two Secretaries-General should appoint a team of forensic scientists to exhume and examine bodies reportedly buried in Togo and Benin. This expert appraisal should help to determine the identity of the victims and the causes of their deaths.

2. To the international community

73. Bearing in mind its concerns with regard to the protection of the witnesses who have cooperated in its inquiries, the Commission recommends that the States Members of the United Nations and the relevant international organizations should provide their financial support to the Office of the High Commissioner for Human Rights with a view to enabling it to implement a mechanism of regular follow-up of the situation of these witnesses.

3. To the Commission on Human Rights and the African Commission on Human and Peoples' Rights

74. The Commission recommends the appointment of a special rapporteur on the situation of human rights in Togo. The Commission is convinced that the creation of such a mandate would

allow for the development of closer cooperation between the Commission on Human Rights and the Togolese authorities and Togolese civil society with a view to better protection of human rights in Togo.

75. The Commission furthermore suggests that the Special Rapporteurs of the Commission on Human Rights and the African Commission on Human and Peoples' Rights concerned, respectively, with extrajudicial, summary and arbitrary executions, torture and violence against women should make periodic visits to Togo. The Commission is convinced that such visits and the resulting mission reports would enable the Government of Togo and Togolese civil society to prevent similar violations from being perpetrated in the future.

4. To the Government of Togo

76. The Commission recommends that a criminal inquiry should be commenced as soon as possible through the establishment of a special team of judges entrusted not only with elucidating the various allegations of extrajudicial executions, enforced disappearances and other violations mentioned in this report and in other documents, but also with prosecuting and punishing, as appropriate, the perpetrators of these violations. Should such an initiative be undertaken, the Commission would appreciate the Government informing the United Nations and the Organization of African Unity about the results of these actions.

77. The Commission furthermore recommends that the Government of Togo should adopt legislative and other measures to punish and prevent the perpetration of such violations, in conformity inter alia with the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

Annex I

STATEMENT DELIVERED ON 20 AUGUST 1999 BY THE CHAIRPERSON OF THE SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Situation of human rights in Togo

Concerned by the allegations that several hundred people were victims of extrajudicial executions in Togo in 1998, the Sub-Commission has taken note of the controversy which has arisen as to whether or not, or the extent to which, these allegations are true,

Considering that, on account of this controversy, it was urgent that an appropriate and effective investigation should be undertaken in accordance with international norms and in an impartial and independent manner, with a view to establishing the truth,

Following the constructive discussions which the Togolese delegation has had with, inter alia, the Office of the High Commissioner for Human Rights and members of the Sub-Commission,

The Sub-Commission:

(a) Welcomes with satisfaction the initiative of the Government of Togo to set up an international commission of inquiry in accordance with international norms;

(b) Also welcomes favourably the proposal of the Government of Togo to request the Secretary-General of the United Nations and the Secretary-General of the Organization of African Unity to set up the commission of inquiry in accordance with international norms;

(c) Takes note of the willingness of the Government of Togo to ask the Secretary-General of the United Nations and the Secretary-General of the Organization of African Unity to provide, as required, the assistance necessary for the proper functioning of the international commission of inquiry;

In addition, taking account of the observations of the Sub-Commission, the Government of Togo has undertaken to:

(a) Provide the international commission of inquiry with support and assistance so that it can accomplish its task with competence in accordance with international norms, and within a reasonable time;

(b) Take all appropriate measures to ensure that the competent authorities cooperate fully with the international commission of inquiry.

The Sub-Commission requests the Secretary-General of the United Nations and the Secretary-General of the Organization of African Unity to report to it at its next session on the results of the efforts made in the framework of the present statement.

Annex 2

International Commission of Inquiry for Togo

RULES OF PROCEDURE

Adopted at Geneva on 4 August 2000

Article 1. Mandate

The Commission shall collect, examine and analyse all information relevant to the allegations that hundreds of people were victims of extrajudicial executions in Togo in 1998 with a view to establishing the truth. The Commission shall take into account the context, modalities and impact of those events. The work of the Commission shall be conducted in an impartial and independent manner in accordance with international norms.

Article 2. Solemn declaration

1. The members of the Commission shall be required to make the following solemn declaration:

> "I solemnly undertake to perform my duties and exercise my powers as a member of the Commission independently, honourably, faithfully, impartially and conscientiously."

2. The members of the Commission secretariat shall be required to make the following written declaration:

> "I solemnly declare and promise to exercise in all loyalty, discretion and conscience the functions entrusted to me as a staff member of the International Commission of Inquiry for Togo and to respect and safeguard the confidentiality of all sensitive information, including the sources, provided to the Commission during the course of its investigations."

Article 3. Privileges and immunities

The Commission, including all members of the Commission, shall enjoy all forms of protection accorded by the Convention on the Privileges and Immunities of the United Nations.

Article 4. International norms

The inquiry shall be conducted in accordance with relevant international norms, including the international human rights instruments currently in force and, in particular, the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, the Guidelines for the Conduct of United Nations Inquiries into Allegations of Massacres and the Declaration on the Protection of All Persons from Enforced Disappearances.

The Commission shall also be guided by other relevant materials, including the draft Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and guiding principles 5 to 12 relating to the establishment of extrajudicial commissions of inquiry (E/CN.4/Sub.2/1997/20/Rev.1, annex II), adopted by the Sub-Commission on the Promotion and Protection of Human Rights at its forty-ninth session.

Article 5. Methods of inquiry

In order to fulfil its mandate, the Commission shall:

(a) Receive from governmental and non-governmental sources information, documentation and all other material relevant to establishing the truth;

(b) Request information, documentation and all other material relevant to establishing the truth from Governments, including from the Government of Togo, the United Nations and the Organization of African Unity, civil society organizations, including political parties, the press and individuals;

(c) Undertake fact-finding missions in any part of Togo or other cooperating countries, including on-site visits with unrestricted access and unhindered interviews, in order to obtain additional information, collect evidence, record testimonies and verify facts;

(d) Interview victims, witnesses and other persons allegedly involved in violations of human rights, including persons accused, or against whom there is evidence, of involvement in human rights violations;

(e) Solicit the cooperation of any expert or knowledgeable person who may be able to assist the Commission in the fulfilment of its mandate;

(f) Compile, analyse and verify information and all relevant materials received through the above-mentioned methods and sources.

Article 6. Confidentiality of information and protection of witnesses

1. The Commission shall ensure that individuals and their families are protected from threats or retaliation of any kind for cooperating with the Commission. To this end, the Commission shall adopt procedures and methods of work aimed at protecting such persons during all stages of the inquiry as well as thereafter.

2. Members of the Commission and members of the secretariat shall exercise discretion. They shall refrain from taking a stand in public on any issue or confidential question under discussion in the Commission. The Chairman shall make information on the work of the Commission available to the public to the extent that the Commission deems it appropriate.

3. All written materials and records of the Commission, as well as other material evidence gathered by it during the inquiry, shall constitute the property and archives of the United Nations and shall enjoy the treatment granted to such property and archives under the Convention on the Privileges and Immunities of the United Nations.

Article 7. Cooperation with the United Nations, the Organization of African Unity and the Government of Togo

The Commission shall endeavour to establish cooperation with the United Nations, the Organization of African Unity and the Government of Togo based on the following commitments:

(a) At the request of the Commission, the United Nations and the Organization of African Unity shall provide the assistance necessary for the proper functioning of the Commission;

(b) At the request of the Commission, the Government of Togo shall provide the Commission with support and assistance so that it can accomplish its task with competence and within a reasonable time; it shall take all appropriate measures to ensure that the competent authorities cooperate fully with the Commission. At the request of the Commission, appropriate security arrangements shall be undertaken to protect the Commission's personnel, premises, documents and materials. The Government of Togo shall guarantee in particular, freedom of movement, freedom of access to all sources of information and unhindered contacts with government authorities, civil society organizations and individuals.

Article 8. Meetings, powers of the Chairman and decisions

1. The Commission shall hold its meetings in private. It may, however, hold public meetings when it is deemed necessary for the effectiveness of its work.

2. The Chairman shall declare the opening and closure of each meeting of the Commission, direct the discussions, accord the right to speak, put questions to the vote, announce decisions, rule on points of order and exercise control over all proceedings.

3. The Chairman shall be the spokesperson for the Commission and shall represent the Commission in its external contacts. He may delegate his powers in cases where he is unable to exercise them.

4. The Commission shall take its decisions by consensus. In the absence of a consensus, decisions of the Commission shall be taken by a majority of two of the three members.

Article 9. Secretariat

The secretariat of the Commission shall be responsible for taking all necessary measures to ensure that the work of the Commission, including its meetings, is carried out effectively. The secretariat shall ensure the collection, preparation and distribution of documents and materials to the members of the Commission as requested by the Commission, its Chairman or any member thereof. It shall be responsible for the preparation of the records of the proceedings of the Commission.

Article 10. Report

1. The Commission may designate a rapporteur on any topic of a general or specific nature.

2. The Commission shall report its findings, conclusions and recommendations to the Secretaries-General of the United Nations and the Organization of African Unity.

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COMMISSION ON HUMAN RIGHTS
Fifty-seventh session
Item 9 of the provisional agenda
Sub-Commission on the Promotion
and Protection of Human Rights
Fifty-third session
Item 2 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Letter dated 22 January 2001 from the Prime Minister of Togo addressed to the United Nations High Commissioner for Human Rights

We acknowledge receipt of the report of the Commission of the Organization of African Unity and the United Nations concerning the allegations of Amnesty International, which you kindly made available to us. From an analysis of its content it is clear that this is in fact a partial report by a Commission which has exceeded its mandate and of which some members are known to have links to Amnesty International.

Accordingly, the Government of Togo declares this report inadmissible. It has been well established that Amnesty International's allegations are without any foundation and that this report is a political fabrication aimed at discrediting the Government and people of Togo.

As proof, we are making available to you the correspondence which Mr. Gilchrist Olympio sent to Mr. Pierre Sané for the preparation of the Amnesty International report and indicating the commissions paid by that individual to the Secretary-General of Amnesty International.

It should be noted that, notwithstanding all of his denials, Mr. Gilchrist Olympio cannot dispute the authorship of the above-mentioned correspondence, since the findings of the studies made by a United States forensic handwriting examiner attest to the fact that Mr. Olympio actually signed the documents in question.

Accept, Madam, the assurances of my highest consideration.

(Signed): Messan Agbeyome Kodjo
Prime Minister

Annexes:*

1. Reaction of the Togolese Government
2. Correspondence from Mr. Olympio to Mr. Pierre Sané
3. Attestation of the United States handwriting examiner

* Annexes 2 and 3 are reproduced as received, in English and French only.

Annex 1

REACTION OF THE GOVERNMENT OF THE TOGOLESE REPUBLIC TO THE REPORT OF THE INTERNATIONAL COMMISSION OF INQUIRY OF THE ORGANIZATION OF AFRICAN UNITY AND THE UNITED NATIONS CONCERNING THE ACCUSATIONS OF AMNESTY INTERNATIONAL

Report of the Government of Togo on the Amnesty International affair

1. The Amnesty International report

On 5 May 1999, Amnesty International published a grossly misleading report attacking the Togolese authorities and accusing them of barbarous acts. The most damning passage concerned the period of the June 1998 Presidential election.

The report inter alia stated:

> "In June 1998, during the Presidential election campaign, and after the results were announced, hundreds of people, including members of the military, were extrajudicially executed. Bodies were retrieved from the beaches of Togo and Benin and corpses were seen at sea for at least four days around Benin."

2. The political circumstances

It should be pointed out that the Amnesty International report was deliberately published on the day when the facilitators of the inter-Togolese dialogue were to arrive in Lomé.

The aim was therefore to paralyse this dialogue, which the terrorist faction of the opposition led by Gilchrist Olympio was against, unlike the other opposition parties. This fact alone is enough to demonstrate the complicity between, on the one hand, the authors of the report and especially the Secretary-General of Amnesty International, Mr. Pierre Sané, and, on the other hand, Mr. Gilchrist Olympio. A similar complicity occurred, at the time of the Presidential election, between Mr. Olympio and the European Regional Information Society (ERIS), an association working for the European Union to observe the election. This was denounced by the former Prime Minister of France, Mr. Michel Rocard.

3. The judicial proceedings and inquiry

As soon as the Amnesty International report was published, the Governmen. of Togo instituted legal proceedings against the authors of the report and their accomplices.

A judicial case was furthermore opened concerning the crimes allegedly committed.

An investigation conducted, beach by beach, by the national gendarmerie as part of the inquiry helped to show that none of the facts referred to in the report were correct.

In connection with the complaint of the Minister of Defence, the first examining magistrate charged four people on 7, 14 and 20 May 1999 with complicity to commit an offence against honour, dissemination of false information and incitement to revolt.

The persons questioned as part of the inquiry pointed out furthermore that while they had reported rumours to fuel the Amnesty International report, they had never mentioned any of the imagined deaths referred to therein.

Those asked the question:

"The Amnesty International report refers to hundreds of bodies found on the beaches of Togo and Benin. What do you say to this?"

responded on 11 May 1999 as follows:

Mr. Gayibo laughed and said:

"I personally never heard about that."

Mr. Tengue himself said:

"Hundreds of bodies! For me, that sounds like science fiction. And there was no mass gathering? You know the problem of mass gatherings in Togo. We love dead bodies. Hundreds of bodies and no reaction? The whole town would have stayed home for the funerals."

Another person questioned, Brice Sant'Anna, said:

"Mr. Tengue also asked us to add some phoney information about alleged human rights violations.

"That is how the members of Amnesty International came to be handed a document we had prepared under those conditions. That document was later seized by the police. It contained the following sentence: 'for some time discoveries of dead bodies have been made on the Togolese coast'.

"I think it is this erroneous information that was then turned by the members of Amnesty International, serving as accomplices of Gilchrist Olympio, into an accusation concerning a hundred or so deaths.

"We did not check on the truthfulness of the information published.

"I know that when he came to Lomé, Gaétan Moutoo of Amnesty International slept for the first night at the home of Mr. Gninivi, with whom he had been friendly at Tokoin Wuiti.

"He later went to Le Bénin hotel, but we were asked to look after him and give him our press files for him to add to his report against Togo.

"In the course of those meetings, I learnt that Mr. Sané was a friend of Gilchrist Olympio, whom he had met on several occasions and whose action he supported.

"We prepared several visits by Mr. Moutoo to the interior of the country. In that connection, we asked some local people to come forward and say that they had been victims of human rights violations. They then repeated those allegations to Mr. Moutoo. I myself led the Amnesty International representatives around the Lakes prefecture, while Mr. Tengue took them to Notsé."

The judicial inquiry thus reveals that:

- The facts adduced by Amnesty International are incorrect;

- The Amnesty International report is the product of complicity between the leaders of Amnesty International and some terrorist opposition leaders, including Gilchrist Olympio.

4. The concordant international testimony of observers and journalists

The inquiry confirms what all the observers and journalists present in Lomé at the time of the Presidential election themselves noted.

None of them lends credence to Amnesty International's claims. They all confirmed the calm and quiet atmosphere of the election and they never heard anyone report these alleged deaths. This is also what an Africa specialist, the journalist Stephen Smith, confirmed in the daily newspaper Libération.

The President of the French Republic, Mr. Jacques Chirac, while visiting Lomé in July 1999, for his part described the Amnesty International report as being the result of manipulation.

5. The request by Togo for a commission of inquiry

In the light of the above, the leaders of Amnesty International should have been put on trial in Lomé.

However, in order to provide evidence of his good will and undeniably bring out the truth, the President of the Togolese Republic, Gnassingbé Eyadéma, called for an international commission of inquiry to be set up under the joint auspices of the United Nations and the Organization of African Unity.

After its mandate was defined, the Commission was set up on 7 June 2000. Its establishment was announced in a joint press release of the United Nations and the Organization of African Unity. The press release states that the Commission was set up at Togo's initiative.

6. The Commission's mandate

The Commission was given the task of verifying whether or not the following allegations in the Amnesty International report are founded:

> "In June 1998, during the Presidential election campaign, and after the results were announced, hundreds of people, including members of the military, were extrajudicially executed. Bodies were retrieved from the beaches of Togo and Benin and corpses were seen at sea for at least four days around Benin."

7. Composition of the Commission

The Commission is composed of the following:

Chairman: Mr. Mahamat Hassan Abakar (Chad);

Members: Mr. Paulo Sergio Pinheiro (Brazil);
Mr. Issaka Souna (Niger).

The Commission was assisted by a support team. The composition of this team raised some comments on the part of the Government of Togo, as certain of the members proposed had had links to Amnesty International.

Following the removal of these members, the Chairman of the Commission informed the Government that he himself had conducted missions for Amnesty International and asked whether this would make it necessary for him to resign from his post. The Government replied that it did not intend to take any decision which it was the Chairman's prerogative to take as his conscience dictated.

The Government of Togo does not intend to interfere in the Commission's activities; it simply wishes to see an independent and impartial inquiry bring out the truth after the wild accusations which have been brought to bear against Togo.

However, it cannot help but regret that certain members of the Commission were chosen from among Amnesty International teams, which casts doubt on their work.

8. Prior conditions

Two prior conditions set by the Commission delayed its arrival in Lomé:

(a) It was requested that judicial proceedings against Pierre Sané and his accomplices should be suspended. This is quite an unusual request in a State under the rule of law.

Nevertheless, the Head of State agreed that the Government of Togo would withdraw its complaints as soon as the Commission arrived in the field.

(b) It was also requested that the security of witnesses should be guaranteed. This request was granted all the more willingly as the Government of Togo, which had requested the establishment of the Commission of Inquiry, naturally wished in no way to bring its work to a standstill or influence its investigations.

In a press release dated 20 October 2000, the Commission stated:

"The Government of Togo, at the request of the Commission and in accordance with its previous undertakings to cooperate fully with the inquiry, has agreed to the following:

Concerning the case against Pierre Sané, Secretary-General of Amnesty International, the Government of Togo has decided to drop all proceedings against Pierre Sané and the other individuals involved in the allegations which are the subject of this inquiry, as soon as the Commission has begun its work in the field, i.e. in Lomé.

Concerning the protection of witnesses and the Commission's sources, the Government of Togo has confirmed that no one will be harassed or prosecuted for having testified before or cooperated with the Commission of Inquiry."

9. Work of the Commission of Inquiry

The Commission held its first meeting in Geneva from 31 July to 4 August 2000. At this meeting, it adopted measures relating to its methods of work. It held a second meeting in Geneva from 18 to 22 September 2000.

It met twice in Togo, in November and December 2000. It was provided with full facilities for conducting its investigations and interviewing anyone it deemed necessary with a view to obtaining as much information as possible. The Commission also travelled to Benin and Ghana, although that country was not covered by its mandate.

Thus the Government of Togo, which had requested the establishment of the Commission of Inquiry, did everything in its power to help it to discharge its mandate while fully protecting its independence.

It should also be noted that the Government received no requests from the Commission of Inquiry concerning the identity of any particular person who might have been the victim of these alleged summary executions during the period of the Presidential election, which would certainly have been the case if such events had occurred.

10. Violation by the Commission of the adversarial principle

In a letter received on 12 December 2000, the Chairman of the Commission provided the Minister of Justice with a list of persons reported to have disappeared or to have been the victims of extrajudicial executions.

In a letter dated 20 December 2000, the Minister of Justice replied as follows:

"Sir, in reply to your letter of 10 December 2000, I would remind you that the competence of your Commission, which was established at the request of the Government of Togo, relates to the verification of the following point:

'In June 1998, during the Presidential election campaign, and after the results were announced, hundreds of people, including members of the military, were extrajudicially executed. Bodies were retrieved from the beaches of Togo and Benin and corpses were seen at sea for at least four days around Benin.'

Your mandate is therefore limited ratione temporis, ratione materiae and ratione loci.

I note, however, that your request does not fall within your competence. It is therefore impossible for me to meet it, which does not mean that Togo will refuse to provide the human rights bodies with full information concerning the wild allegations of executions and disappearances which you report.

But I must remind you of the purpose of your mission. Togo has been unfairly accused by Amnesty International of hundreds of summary executions during the period of the Presidential election; we are still awaiting a list of these hundreds of executions alleged by Amnesty International, and I find it astonishing that you have not provided us with a single document in this connection while at the same time exceeding your mandate.

Accept, Sir ...".

Nevertheless, the Minister of Justice applied on the same day to the Chairman of the National Human Rights Commission asking him to conduct an inquiry into these gratuitous accusations which exceed the Commission's terms of reference.

11. Inequality of treatment by the Commission in favour of the Union des forces de changement (UFC)

In a letter dated 19 November 2000, Chairman Amegah forwarded to the International Commission of Inquiry various documents relating to the Amnesty International affair.

These documents appear to have been transmitted by the Chairman of the Commission of Inquiry to the Union des forces de changement.

This action shows that the Commission's procedure is developing in keeping with the adversarial principle.

The Government notes, however, that this procedure is one-sided.

At no time was the Government provided with documents in support of Amnesty International's false accusations concerning so-called hundreds of deaths, such as the victims' identities, complaints lodged by the families, etc.

The Government can only conclude that Amnesty International has been unable to furnish any reliable documents incriminating the Government of Togo.

Having been seriously libelled by the Amnesty International report, the Government is entitled to be informed of the material put forward to support the outrageous charge that hundreds of people were killed.

The Government therefore made a request to the Commission, to the effect that any such document, if any existed, which it received from any party whatsoever, should be transmitted to the Government in order to guarantee that an adversarial procedure was followed. This has not been done.

It will be noted that the Commission has taken care not to make any reference in its report to the documents transmitted by the Government of Togo to the Commission which indicate an unethical relationship between Pierre Sané and Amnesty International, whereas, in order to clear Amnesty International's leaders, the Commission accuses the Togolese authorities of attempts to bribe unidentified persons. This is an unquestionable example of the Commission's bias.

Thus the rule of impartiality and equal respect for the rights of all parties, which is an essential component of the Commission's work, has been violated.

12. Submission of the Commission's report

The Commission transmitted its confidential report to the Government of Togo on 17 January 2001, without observing an adversarial procedure at any time. At no time did the Commission communicate lists of names of the hundreds of missing persons or of complaints lodged by their families.

13. Conclusions of the Government of Togo concerning the Commission's report

(a) The Government notes with satisfaction that at no time did the Commission provide any evidence supporting Amnesty International's wild allegations of so-called hundreds of victims. At no time were the victims' identities or their families' complaints submitted to the Government in accordance with an adversarial procedure, which would have certainly been the case if the victims had really existed. To avoid deciding against Amnesty International, the Commission states that it can neither confirm nor invalidate the allegations which were the purpose of its mission. This conclusion alone is enough to show that Amnesty International has provided no evidence in support of its allegations. It also shows that the Commission has not fulfilled its mandate.

Annexe 2

MIDCO INTERNATIONAL (1988)

PREMIER HOUSE, SUITE 522, 10 GREYCOAT PLACE, LONDON SW1P 1SB
TEL : 0171 233 0202 FAX : 0171 222 0631 TELEX : 918475 MIDCO G

Londres, le 29Avril 1999

Monsieur PIERRE SANE
Amnesty International
1 Eastern Street
London WC1X 8DJ
United Kingdom

Cher Pierre,

Pour faire suite à notre dernier entretien, du reste fort constructif en termes de stratégie, je te prie de trouver ci-jointe, sous plis fermé, conformément à nos communs engagements, la somme de US dollars 300. 000 .

Avec la prochaine publication dans quelques jours, je suis convaincu de ton engagement à nos côtés pour combattre la vieille dictature de l'Afrique.

Je veux également te rassurer de ma disponibilité à t'apporter l'aide nécessaire dans le cadre de ton combat pour la libération de la Casamance.

Je te ferai parvenir par mon collaborateur Charles QUIST, la somme de US dollars deux cents mille, lors de ton prochain séjour à ACCRA .

Comme convenu, retournes-moi la présente copie, par mesure de confidentialité, portant le code prévu pour confirmation.

Fraternelles amitiés.

Pole 13

G. S. Olympio

MIDCO INTERNATIONAL (1988)

PREMIER HOUSE, SUITE 522, 10 GREYCOAT PLACE, LONDON SW1P 1SB
TEL : 0171 233 0202 FAX : 0171 222 0631 TELEX : 918475 MIDCO G

Londres, le 17 Mai 1999

Monsieur PIERRE SANE
ACCRA

Cher Ami,

Reçois ici mes félicitations pour les dommages créés au gouvernement togolais avec la publication de votre dernier rapport sur les droits de l'homme au Togo.

Tu trouveras comme prévu dans le plis fermé ci-joint la somme de US $ 200.000.

Par précaution, vérifies le nom du porteur de la présente qui se nomme CHARLES QUIST .

Ne pas oublier le code comme précédemment.

Sincères Amitiés.

G. S. Olympio

POK 01

Annex 3

Strokes & Slants

Handwriting Services

Forensic Document Examination

January 12th 2001

For the Attention of
Fred Alston

It is of my opinion that the documents in question are all signed by the same person, my findings are as follows:

Letters dated 17 May 1999 and April 29 1999 are signed by the same person.

I based my findings on the examination of Xeroxed copies.

Beverley East. QDE
Handwriting Examiner

1200 G Street, NW Ste 800 * Washington D.C. 20005 * Tel (202) 434 8767 * Fax (202) 434 8707
E-mail: Strokes444@aol.com Website: www.writeanalysis.com

UNITED
NATIONS

E

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COMMISSION ON HUMAN RIGHTS
Fifty-seventh session
Item 9 of the provisional agenda
Sub-Commission on the Promotion
and Protection of Human Rights
Fifty-third session
Item 2 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Letter dated 6 February 2001 from Mr. Vincent Del Buono, Deputy Secretary General of Amnesty International, addressed to the United Nations High Commissioner for Human Rights

GE.01-11621 (E)

In response to your letter of 23 January 2001, Amnesty International is pleased to submit the following comments on the final report of the International Commission of Inquiry for Togo.

1. Publication of the report of the International Commission of Inquiry

Amnesty International very much welcomes the fact that the International Commission of Inquiry was able to conclude its work despite the difficulties encountered. In line with the Commission's first recommendation and as a matter of principle regarding all international commissions of inquiry, Amnesty International strongly urges that the report be made public.

2. Persistence of gross human rights violations and impunity

Amnesty International notes the key conclusion of the International Commission of Inquiry that during 1998, the year to which the Commission was mandated to limit its inquiry, there was a situation of systematic violations of human rights in Togo and that allegations of extrajudicial executions, "disappearances", torture, arbitrary arrest and rape should be further investigated and those responsible brought to justice. Amnesty International has long denounced the recurrence of gross human rights violations and the persistence of a situation of impunity in Togo, calling repeatedly on the Togolese authorities, in correspondence and meetings with them in the country and abroad, to redress this situation. However, the Togolese authorities have persistently failed to end such violations and bring those responsible to justice, even when calls for action have been made by Togo's own National Commission for Human Rights, as in 1991, when it concluded that security forces were involved in the killings of people whose bodies were found in the Bé lagoon.

Impunity in Togo has also been a central concern of the Human Rights Committee. When, in 1994, the Committee last reviewed the human rights situation in Togo since 1988, it concluded:

> "The Committee deplores the large number of cases of summary and arbitrary executions, enforced or involuntary disappearances, torture and arbitrary or unlawful detention committed by members of the army, security or other forces during the period under review. It is deeply concerned that those violations were not followed by any inquiries or investigations, that the perpetrators of such acts were neither brought to justice nor punished and that the victims were not compensated."

The 1994 conclusion of the Human Rights Committee is confirmed by the International Commission of Inquiry for 1998 and still stands today: there is a long-standing pattern of impunity for gross human rights violations in Togo. Noting that an escalation of violations took place in the context of the national parliamentary elections of 1998, Amnesty International fears that such an escalation may recur again in the context of the next elections due in October 2001. Amnesty International fully endorses the Commission's recommendation that perpetrators of violations must be brought to justice both to ensure there is no impunity for past violations and to deter future ones. We also wish to highlight the following.

3. Proper judicial investigation and international monitoring

Given the persistence of the situation of impunity and the tactics of intimidation of human rights defenders and others, as documented extensively in the Commission's report and elsewhere, the question must be asked whether a national judicial investigation, as recommended by the Commission, will be able to establish the facts and ensure that perpetrators are brought to justice. Amnesty International stresses the need to ensure that any such judicial investigation, if established, is conducted strictly in accordance with relevant international standards, notably the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, adopted by the United Nations General Assembly in 1989, and the *Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions* (United Nations, 1991). It is particularly important to ensure that any such investigation is fully resourced and has the authority to compel officials to testify (Principle 10). Its members should be chosen for their recognized impartiality, competence and independence (Principle 11) and complainants, witnesses and those conducting the investigation and their families must be effectively protected from any form of intimidation (Principle 15). Amnesty International believes that such an investigation would greatly benefit from international judicial and other experts among its members.

While Amnesty International regrets that the Commission did not benefit from expert support such as that of forensic pathologists and aviation experts, it welcomes the Commission's recommendation that such experts be sent to the area as soon as possible, including a team of pathologists to undertake exhumations in Togo and Benin. These further investigations should be carried out promptly and in accordance with international standards, notably the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (see above) and the 1995 Guidelines for the conduct of United Nations inquiries into allegations of massacres. The authorities in Togo and Benin should provide full cooperation. The report of these investigations should be made public.

Amnesty International welcomes the recommendation that the Commission on Human Rights appoint a special rapporteur on the human rights situation in Togo and calls on the Commission on Human Rights to implement this recommendation immediately.

Amnesty International also welcomes the recommendation that the relevant thematic Special Rapporteurs of the Commission on Human Rights and the African Commission on Human and People's Rights visit Togo and Benin, and reiterates its call to the two Governments to invite the relevant Special Rapporteurs and also the Working Group on Enforced or Involuntary Disappearances. Their reports should make specific recommendations for the prevention of any such violations in future and be made public.

4. Protection of witnesses

Amnesty International shares the concern of the International Commission of Inquiry about the protection of witnesses and others who have collaborated with the Commission and welcomes the efforts so far by it to ensure such protection. Amnesty International believes that ensuring adequate protection against any reprisals is a matter of the utmost urgency. As the

Commission itself experienced, the Togolese authorities have resorted repeatedly to attempts at intimidating and bribing witnesses to give wrongful testimony or to refrain from testifying to it. In the course of the Commission's visit to Togo and neighbouring countries, Amnesty International has been contacted by people who intended to give evidence to the Commission or did so and reported having been the target of intimidation. Two fishermen from the coastal region of Benin who testified to the Commission have reported being threatened in Benin. Two other people who also had contacts with the Commission have since left Togo fearing for their safety.

In Amnesty International's view, an effective protection programme for all those who have been involved with the Commission and indeed for anyone who has been working on human rights or is related to victims requires a specialized, dedicated United Nations presence in Togo to be deployed as soon as possible with a mandate to also cover any such persons in Benin and Ghana.

5. Protection of human rights defenders

Amnesty International remains concerned that the charges against human rights defenders in the country and abroad, including the organization's Secretary-General, do not appear to have been dropped. It is the organization's understanding that the current legal situation following the Commission's intervention with the Togolese authorities is one of temporary suspension of criminal proceedings, which may resume at any time without the need for further evidence. Amnesty International believes that the Togolese Government should ensure that these proceedings are properly and definitively dropped.

The Togolese authorities should also put an end to the use of defamatory statements aimed at discrediting or intimidating human rights work, such as the letters purportedly written by the leader of the *Union des forces du changement* (UFC) to Amnesty International's Secretary General and referred to in paragraph 17 of the Commission's report. Amnesty International's Secretary General has not received any such letters nor the bribes referred to in them. The person alleged to be the author of the letters has stated that they are a fabrication and has reportedly filed a complaint in the courts about them.

6. The international community

Amnesty International appeals to governments to assist the United Nations and the Organization of African Unity with the provision of expert personnel and financial support to ensure they can implement these recommendations, first and foremost those relating to the protection of witnesses.

Amnesty International also appeals to those countries engaged in the transfer of military, security or police equipment or capability which contribute to the perpetration of human rights violations in Togo to end such transfers without delay.

Yours sincerely,

(Signed) Vincent Del Buono
Deputy Secretary General

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Economic and Social
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COMMISSION ON HUMAN RIGHTS
Fifty-seventh session
Agenda item 9
SUB-COMMISSION ON THE PROMOTION
AND PROTECTION OF HUMAN RIGHTS
Fifty-third session
Item 2 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT TERRITORIES; REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

GE.01-11976 (E)

Letter dated 9 March 2001 from the Deputy Secretary-General of Amnesty International addressed to the United Nations High Commissioner for Human Rights*

In your letter of 26 February 2001, you transmitted to us the comments of the Government of Togo concerning the report of the Organization of African Unity/United Nations International Commission of Inquiry for Togo.

Since then, intimidation of witnesses has continued, as indicated in our report (attached)**. Since the beginning of 2001, Amnesty International has identified at least 10 cases where persons living in Togo, Ghana and Benin have been harassed by the Togolese security forces or by persons close to the Government of Togo, some for having approached the International Commission of Inquiry. All have had to flee the place where they had been living.

Moreover, it now appears that the letter of the handwriting expert, attached to the comments of the Government of Togo, is a forgery, as are the two letters attributed to Mr. Gilchrist Olympio. The expert, Ms. Beverley East, was contacted by the lawyers hired by Amnesty International, and replied to us as follows:

"... this letter is not mine.

(1) It is not addressed to the person with [to] whom I originally addressed it to.

(2) It is not signed by me.

(3) It is not on my letterhead."

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* On 9 March 2001, the High Commissioner for Human Rights received a letter from the Deputy Secretary-General of Amnesty International concerning the report of the International Commission of Inquiry for Togo. The letter was transmitted to the Secretaries-General of the United Nations and the Organization of African Unity. The letter is being made available to the Commission on Human Rights at its fifty-seventh session.

The United Nations has reproduced the comments of both the Government of Togo (E/CN.4/2001/134/Add.1) and Amnesty International (E/CN.4/2001/134/Add.2) as received. By doing so, the United Nations takes no position on the veracity or otherwise of any of the allegations made therein.

** The report referred to is entitled "Togo: The time for accountability has finally arrived". AI Index AFR 57/006/2001, 28 February 2001. The report is available on the Amnesty International Web site (www.amnesty.org).

In view of the libellous implications for our Secretary-General of the letters attributed to Mr. Olympio, who stated that they were forgeries, it appears to us to be indispensable for this latest information to be given the same circulation as the report and its addenda. We ask you in particular to make it available to the Commission on Human Rights and to publish it on your Internet Web site: in our view the High Commissioner cannot knowingly continue to circulate documents which Mr. Olympio and Ms. East have stated to be forgeries, without simultaneously informing the members of the Commission and the public of the latest information received concerning their lack of authenticity.

(Signed): Vincent del Buono
Deputy Secretary-General

UNITED NATIONS **E**

Economic and Social Council

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COMMISSION ON HUMAN RIGHTS
Fifty-seventh session
Item 9 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Letter dated 26 February 2001 from the Permanent Representative of Azerbaijan to the United Nations Office at Geneva addressed to the secretariat of the Commission on Human Rights

I have the honour to transmit herewith a statement by the Milli Majlis (Parliament) of the Republic of Azerbaijan of 2 February 2001.

I would be grateful if you could circulate the present letter and the attached statement* as an official document of the fifty-seventh session of the Commission on Human Rights under item 9 of the provisional agenda.

(Signed): Isfandiyar VAHABZADA

Ambassador
Permanent Representative

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* Reproduced as received, in English only.

GE.01-11584 (E)

Annex

Statement
of the Milli Majlis of the Republic of Azerbaijan

The Milli Majlis of the Republic of Azerbaijan expresses its deep concern at the adoption by the Senate of France of the law on recognition of the so-called «Armenian genocide» and considers the Senate's attempt to judge the events, claimed to happen 85 years ago, as a wrong step, which can cause a new problems in the Caucasus. The world community is aware of the fact that the Armenian nationalists try to rely on their falsified image of «long-suffering and tortured people», subjected allegedly to genocide, in order to veil their policy of hostility and genocide against the Turkic nations, which they have been conducting for the period of more than one hundred years, and to justify their territorial claims and aggressive wars towards the neighboring nations.

Unfortunately, the Senate of France guided in its activities by the democratic principles, falling under the influence of the Armenian diaspora, has lost its feelings of objectivity and adopted unfair law showing indifference to the historic realities. Political evaluation given after a long period of time to the so-called genocide, allegedly committed against Armenians during the World War I, was not a simple issue to be left on paper as some members of the Senate of France claim it. Recognition of the so-called «Armenian genocide» by some world and European States, including France, causes a serious concern in Turkey and the region of Caucasus, creates grounds for the aggravation of relations between the nations and for new territorial claims by Armenia. It is not surprising that the Republic of Armenia, violating the norms of international law and basic principles of the OSCE, refuses to recognize the territorial integrity of the Republic of Azerbaijan.

Scientists, including French ones, adherent to scientific facts, argued long ago that no any Armenian genocide had taken place in history. In fact, starting from the end of XIX century the Armenian nationalists under the illegal and legal patronage of the Russian Tsar, conducting mass acts of terror and massacres on the territory of nowadays Turkish Republic and Caucasus, brutally killed up to one million of innocent Turkish and Azerbaijani civilians, ruined hundreds of civil settlements, ancient historical monuments, cemeteries and tried to destroy all the signs of Turkish presence on that territory.

The Armenian nationalists perpetrated cruel massacre against the civilians in 1905-1907 in Iravan and Zangazur (nowadays territory of the Republic of Armenia), Tiflis, Baku, Nakhchivan, Ganja, Karabakh, in 1914 in the Eastern Anatolia – Arzurum, Kars, Ardahan, Adana, in 1918-1920 in Baku, Shamakhi, Guba, Mugan and Lankaran. On 31 March 1918 in the city of Baku, the capital of Azerbaijan, over 30,000 civilians were killed within one day. It is surprising and regretful that today the Parliament of France shuts its eyes to these facts while intending to evaluate the history.

Hostile policy towards Azerbaijan was also continued during the Soviet period. Thus with the support of pro-Armenian leadership of the USSR about half million of Azerbaijanis were deported or expelled from Armenia in 1948-1953 and 1988-1989, hundreds of them were killed on the grounds of their ethnic belonging.

The Senate of France is aware of the fact that as a result of the aggressive war and the policy of ethnic cleansing conducted in 1988 with intention to annex by the use of force the Nagorno-Karabakh region of Azerbaijan and join it to Armenia, 20 percent of the territory of Azerbaijan has

been occupied, one million of Azerbaijanis have been forcibly displaced from the territory of Armenia and their home places at the occupied territories of Azerbaijan. Over 18 thousand of Azerbaijanis were killed, 20 thousand of civilians injured, 50 thousand of people became disabled, 4 thousand persons disappeared or taken hostage, 877 towns, villages and districts were plundered, destroyed and burned.

The fact of accepting by the Senate of France of the Armenian nationalists' claims, related to the beginning of the XX century, and shutting at the same time its eyes to the current aggressive war, genocide and policy of ethnic cleansing perpetrated by them against the people of Azerbaijan, demonstrates clearly its pro-Armenian and biased position. In order to imagine the scope and brutality of the crimes of genocide committed by the Armenian armed forces against Azerbaijanis, it is enough just to recall the tragedy, which took place in the town of Khojaly on 26 February 1992. As a result of this tragedy, which has become one of the most terrible crimes in the history of mankind, the Armenian armed forces wiped off the face of the earth the whole town, 613 Azerbaijani civilians were brutally killed, including 63 children and 106 women, 487 people disabled 1,275 persons, including elderly people, children and women, taken hostage and subjected to terrible tortures, degradation and insults.

Despite the fact that the significant part of its territory is under occupation and one out of every eight people of its population is a refugee and living in tent camps in severe conditions, Azerbaijan is committed to eliminate peacefully the consequences of the aggression perpetrated by the Republic of Armenia. As it is known, with the purpose to settle the Armenian-Azerbaijani conflict in 1994 already a conflict resolution mechanism was established by the OSCE Minsk Group and its co-chairmanship. At present, France, side by side with the United Nations of America and the Russian Federation, is one of the co-chairmen of the Minsk Group. We very much hope for the objective position and balanced policy of France in regard to the just settlement of the conflict on the basis of the generally accepted norms of international law, including those related to observance of territorial integrity of states.

Unfortunately, while we were expecting the measures to be taken by France in order to contribute the efforts purposed to the settlement of the Armenian-Azerbaijani conflict, the legislative body of this country, given in to the false propaganda of the Armenian chauvinists, has decided to adopt a law, which may cause an increase of tension between the nations and is far away from the historical truth. Adoption of the law by the Senate of France on the so-called «Armenian genocide» and its approval by the President of France cause a serious doubts towards objectivity of the France's position in its capacity of co-chairman of the Minsk Group and reduce our hopes with respect to the activity of this group.

Nevertheless, we are confident that the adoption of such a law does not express the opinion of the people of France in general, as well as the majority of the members of the parliament of France. Participation of 50 members out of 300 of the Senate of France in the meeting, at which the above-mentioned law has been adopted, is a proof of that. However, in all cases these are the historians who should deal with the history, as the parliament is not a body to pass decisions on historical events happened long ago. It is a subject of scientific research.

As it is known, in accordance with United Nations Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, genocide is defined as a crime violating the norms of international law and it is the competence of the International Court to satisfy suits in defining responsibility of any state for committing this crime. In that case the decision of the Senate of France to take upon a role of an international judge should be considered in itself as a violation of

the international legal norms and creation of a ground for interference into internal affairs of other states.

Expressing its deep concern over the fact that the falsification about the «Armenian genocide», used as a means of propaganda by certain circles of the Armenian nationalists and their supporters in order to achieve their malicious political goals, has got an access to the Parliament of France, the Milli Majlis of the Republic of Azerbaijan makes note that this so-called law, which will hamper the efforts to establish peace and stability in the region of Caucasus, can not cause any legal consequences. Expressing the will of the people of Azerbaijan, the parliament of Azerbaijan strongly protests against the adoption in the Senate of France of the unjust law on recognition of the so-called «Armenian genocide» and states to the world community that the information circulated about the «Armenian genocide» does not correspond to the facts.

Baku, 2 February 2001

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UNITED NATIONS **E**

Economic and Social Council

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7 March 2001

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COMMISSION ON HUMAN RIGHTS
Fifty-seventh session
Item 8 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE

Letter dated 27 February 2001 from the Permanent Observer of Palestine to the United Nations Office at Geneva addressed to the United Nations High Commissioner for Human Rights

I would be most grateful if you could have the text of this letter* distributed as an official document of the fifty-seventh session of the Commission on Human Rights under agenda item 8.

(Signed): Nabil RAMLAWI
Ambassador
Permanent Observer

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* Reproduced as received, in Arabic and English only.

GE.01-11607 (E)

Annex

The continuation of the Israeli criminal war

against the Palestinian people

In their perseverance on its grave violations of the rules of international law and international humanitarian law, the Israeli occupation authorities are still causing daily, and since 28 September 2000, further death and injury to Palestinians, thus bringing the total of martyrs to over 400 in addition to over 20 000 injured. These crimes are taking place among other crimes perpetrated by the Israeli occupation forces aimed at killing all aspects of the life of Palestinians under occupation by imposing:

1- Collective punishments on the Palestinian people in the occupied Palestinian territory that the Israeli occupation forces implement through measures of total separation between the West Bank and the Gaza Strip.

2- Closure of the West Bank and the Gaza Strip.

3- Tight military blockade on towns, villages and Palestinian residential centers, obstructing the roads leading to these localities by establishing roadblocks, ground barricades and cement blocks at the points of access to and exit from these towns and localities.

4- Curfew on many Palestinian towns as is the case in the ancient city of Hebron, still under a curfew for over 104 days now and the city of Hawara in the municipality of Nablus, under a curfew for over 25 days now.

5- Prevention of pumping water to many Palestinian cities.

6- Deliberate destruction by the occupation forces to Palestinian agricultural property through campaigns of bulldozing Palestinian farms, thus causing destruction of thousands dunums of lands cultivated with olive trees, citrus trees and other fruit trees which constitute the source of subsistence for thousands Palestinian families.

7- Closure of borders and the Gaza International Airport to forbid Palestinian exit from and access to the Palestinian occupied territories.

8- Preventing access of foodstuffs, medical aid and fuel to the Palestinian areas and exit of Palestinian products designed for export.

9- The Israeli occupation forces are using rockets, tank artillery and heavy machine guns to fire at Palestinian residential buildings and many public utilities, including health and education utilities, causing destruction to hundreds of houses and other properties belonging to the Palestinian population.

10- Preventing Palestinian workers from having access to their place of work to earn their living wage in the Palestinian towns and residential centers.

11- The Israeli occupation authorities and gangs of settlers are preventing, under the threat of weapons, the population of many Palestinian villages from harvesting their crops.

In addition to all the already mentioned forms of collective punishments, the Israeli occupation forces have resorted to implementing the death penalty by acts of assassinations and extrajudical executions of specific civil personalities, such as for example the assassination of the Palestinian Hussein Mohamed Salem Oubeiatt in Beit Sahour on 9/11/2000, assassination of the Palestinian Jamal Abderrazzaq, Awni Zahir and Nael Al-Ledawi on 22/11/2000 near Mirage Settlement in the Gaza Strip, assassination of the Palestinian Ibrahim Abdelkarim Ibrahim bani Ouda on 23/11/2000 in Nablus, assassination of the Palestinian Anouar Mahmoud Ahmed Hamran on 11/12/2000 in Nablus, assassination of Youssef Ahmed Mahmoud Abu Sway on 12/12/2000 in Irtass village of Bethlehem municipality, assassination of the Palestinian Abbas Othman Ahmed Al-Awiwi on 13/12/2000 in Hebron, assassination of the Palestinian Hani Hussein Hassan Bakreh on 14/12/2000 south of the Gaza Strip near

Ketsufiem settlement established on lands belonging to Rafah town, assassination of the Palestinian Saeed Taha Mohamed Saleh Kharoof on 15/12/2000 in Nablus town of the West-Bank, assassination of the Palestinian Sameh Abd Hassan el Malaabi on 17/12/2000 in Qalandia Camp to the north of Jerusalem, assassination of the Palestinian Dr Thabet Ahmed Thabet on 31/12/2000 in Tulkarm to the north of the West-Bank, assassination of the Palestinian Khaled Ghunaim on 08/01/2001 near Halhoul village, assassination of the Palestinian Abdulhamid Khurti on 08/01/2001 near el-Maghraqa roadblock in the Gaza Strip, assassination of the Palestinian Shaker Hassuni on 12/01/2001 in Hebron city of the West-Bank, the assassination of the Palestinian Massoud Hussein Ayyad on 13/02/2001 when the Israeli helicopter gunships fired 4 rockets at his car north of the Gaza Strip.

These acts, which contradict totally the provisions of the Universal Declaration of Human Rights, the International Covenant on Civil, Political and Cultural Rights, the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of war of 1949 and the First Additional Protocol thereto, constitute, according to the provisions of international public law and international humanitarian law, flagrant violations of human rights and war crimes.

The Israeli occupation forces have not sufficed themselves with acts of killing and assassinations against the Palestinian people. In addition to using internationally banned dumdum bullets which explode inside the human body, they resorted to firing an unknown type of internationally banned gas at civilians in khan Yunis, causing over 40 Poisoned cases, who have been overcome by odd symptoms of neurological fits and convulsions, severe feebleness, neurological inflammation accompanied with severe stomachache, bronchitis, loss of consciousness and non-response by the poisoned persons to the medication usually used to cure such cases.

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COMMISSION ON HUMAN RIGHTS
Fifty-seventh session
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CIVIL AND POLITICAL RIGHTS, INCLUDING QUESTIONS OF TORTURE AND DETENTION

Letter dated 9 February 2001 from the Permanent Representative of Turkey to the United Nations Office at Geneva addressed to the High Commissioner for Human Rights

I have the honour to refer to Opinion No. 35/1999 of the Working Group on Arbitrary Detention, dated 2 December 1999, regarding Mr. Abdullah Ocalan, and transmit herewith the responses of my Government to this Opinion.

The annex was forwarded to Mr. Kapil Sibal, Chairman of the Working Group on Arbitrary Detention on 13 September 2000.

I would appreciate it if you would have the annex* circulated as an official document of the fifty-seventh session of the Commission on Human Rights under item 11 (a) of the provisional agenda.

(Signed) Murat SUNGAR
Ambassador
Permanent Representative

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* The annex is reproduced as received, in the language of submission only.

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Annex

Responses of the Turkish Government to the Opinion No. 35/1999 adopted by the Working Group on Arbitrary Detention of the United Nations Commission for Human Rights

The Working Group on Arbitrary Detention of the United Nations Commission on Human Rights specifies the three categories of arbitrary detention in its report and after assessing the information available to them, concludes that the third category of arbitrary deprivation of liberty is present in Mr. Ocalan's case.

The Turkish Government does not deem it necessary to respond to all of the allegations submitted by the applicant, as the major part of these allegations were regarded by the Working Group as "not meeting the measure of gravity" to breach the right to a fair trial.

The Government will only be submitting its views concerning the conclusion of the Working Group regarding a breach of the right to a fair trial.

The Government would like to remind the fact that the Working Group based its unacceptable opinion concerning Turkey partly on the fact that they regarded the responses submitted by the Government as being unsatisfactory.

1. The Working Group believes that the Government's explanation for the lack of access of lawyers during the first ten days of Mr. Ocalan's incarceration with the poor weather conditions was unsatisfactory due to the fact that during the same period the judges were able to have access to the island by helicopter. In response to this allegation, the Government would like to mention the view of the Government that the meteorology reports which are far from demagogical discussions should be taken as evidence. The Government would like to underline its view once more and reiterate that the lawyers of the applicant and public prosecutors had equal opportunities to reach the island.

Since the beginning of the proceedings, the Government has been repeating that its main concern is the safety of the accused. To provide his safety, the Government had to take all the necessary precautions without any exceptions. The measures taken had the nature of effecting everybody who is supposed to deal with Mr. Ocalan. This included the lawyers who had the obligation to provide genuine power of attorneys in order to verify that they were authorised to represent the applicant.

It should be mentioned again that the unfortunate poor weather conditions had a negative effect on the case. It is true that judges and officials had the opportunity to use the helicopter to reach the island. However it is not logical to expect the Government to provide the lawyers with helicopters to reach the island. Instead they have been transferred to the island with usual means of transportation. Due to the poor weather conditions, the officials deemed it unnecessary to risk the lives of lawyers by transporting them to the island by sea.

During the preliminary investigation and trial the lawyers of the defendant had every kind of means to contact Mr. Ocalan and to examine the files of the case thoroughly.

The Government believes that the statement of the Working Group concerning the fact that they found the Government's explanation of poor weather conditions unsatisfactory, is not an expression suitable to appear in a report of an international authority.

In addition to the explanations given above, the contact between the suspect of terrorist activities and his lawyer is subject to special provisions and the same procedures are present both in German and English legal systems. Article 16 of the Turkish Code No. 4229 deals with the term of detention.

Upon the application of the lawyers of the accused which took place on 22 February 1999, the necessary permission was granted and the meeting was scheduled to take place on 25 February 1999, despite the fact that at that date the lawyers still did not have the power of attorney to represent the applicant. Mr. Ocalan had the chance to be represented by eleven lawyers during the trial until the end of proceedings.

2. In the report the second reason for accusing the Turkish Government was given to be the presence of the guards during the meeting which took place between Ocalan and his lawyers. Even if they were not able to hear the conversations between them, their presence was found to be in any event contrary to Article 22 of the "United Nation's Basic Principles on the Role of Lawyers".

The Government has constantly been repeating that the Government's basic consideration has been the safety of Mr. Ocalan. The presence of the official in the meeting of Ocalan and his lawyers relates to this main consideration. However as mentioned above those who were present during the meeting were unable to hear the conversation and did not intervene in any manner.

If the files are examined it will be seen that there is nothing indicating that the presence of the guards had any kind of influence on the trial, intermediary decisions of the court and on the final judgement.

Whether the UN principles on the Role of Lawyers prohibits similar practices or not, one has to accept that the state of necessity is also a basic universal principle of law of civilised communities. Everybody has to appreciate that in such extremely exceptional cases this principle of law is of great importance.

3. The report also gives importance to the threats, insults and attacks alleged to have been suffered by the lawyers and states that no inquiry has been initiated and that the police forces were often in delay to intervene.

There are several statements of the Working Group. Fist of all, lawyers of Mr. Ocalan have not faced any kind of particularly serious threats, insults or attacks. It has been mentioned on several occasions that they had every opportunity and freedom of movement to make public statements and criticise the authorities. Their claims appeared in Turkish newspapers and televisions with detail and some of them may be considered in contradiction to the ontology of professional

lawyers that aims to prevent them from acting as militants when they represent a terrorist suspect within the sphere of a trial. Identifying themselves with their client is against the ethics of profession. When one gets involved in a terrorist approach and act accordingly, it should be accepted that they will face reactions from the public and the relatives of those who where murdered.

At the same time one has to take into consideration that the offender Mr. Ocalan has been the brain and main initiator of the killings of babies, children and of 30.000 more people. How can it be expected that people taking Mr. Ocalan's side, will be approved by those who were fathers and mothers of murdered victims. When the situation is assessed according to principles of basic logic, one will be able to consider the very serious concern of the Turkish authorities and officials in dealing with the protection of lawyers.

Secondly, the affirmation that no inquiry has ever been initiated by the Government does not reflect the truth and is against the reality of the work carried out by the legal authorities in this respect. As a matter of fact, the office of the chief public prosecutor has started an investigation concerning the allegations relating the attacks. Official investigations are still in pending and the Working Group should not be making such judgements prior to the decisions of the juridical endeavours. This attitude is really not understandable.

Thirdly, the allegation that the police forces often arrived late is not supported by facts and evidence. The fact is that, police forces have always been present in this vicinity of the court and spent every effort to prevent the lawyers from being harassed. They behaved in a very dignified and calm manner while separating the lawyers from the public.

The other fact is that lawyers have not suffered any harassment when they were making public proclamations criticising the authorities and officials in a harsh manner.

4. The Working Group states in its report that Mr. Ocalan's allegation that he was held *in communicado* detention for ten days was not contested by the Government and reaches the conclusion that as he was medically examined during his trip to Turkey, the time spent on the plane should be regarded as being spent in a place of detention.

It is not possible for the Government to understand the logic of regarding the plane as a place of detention. The transfer of Mr. Ocalan from Kenya to Turkey by plane takes time during which some conversation took place between officials and the suspect. These conversations can not be regarded as questioning. There is no record of this conversation which supposedly took place.

During this transfer to Turkey how can one expect that the representatives of the suspect to be present? As we explained in the responses to the applications made on behalf of Mr. Ocalan, any statement taken from him at that stage, was not used against him and did not take place in the trial.

The case of Mr. Ocalan consists of files and processes initiated by the courts of different parts of Turkey, but the case was not supported by the statements taken from the accused during the pre-trial phase.

5. As a last point in the report, the constitution, independence and impartiality of Turkish State Security Courts were discussed. In that respect, the report contains a big error concerning the nature of these courts.

First of all, the report identifies these juridical authorities as "military courts". These courts were of non-military character even before the 1999 modification of the Turkish Constitution. Before the modifications and afterwards, these courts were and now constituted according to the principle of collegiality, which means that there were three judges sitting. One of these three members was a military judge, nominated by the Superior Council of Prosecutors and Judges. In August 1999, after the modification of the Constitution and the Law, all members are civilian professionals, appointed by the aforementioned council. So, the fact of modification should not be called as the "demilitarisation" of so called "military" courts.

Unfortunately, the report reiterates this expression several times. There is no transformation of military courts to civil courts. First of all this mistake has to be corrected.

Another serious erroneous conclusion is as follows:

The report states that:

a) Amended law did not prescribed any procedure to be followed in respect of cases that had been tried under the repealed law.
b) Mr. Ocalan's trial did not begin *de novo* after the amendment of the law.
c) Mr. Ocalan used to be tried by a military court and after the modification by a civil court. So, civil court could not continue to try a case which has been tried before in a military court.
d) The judge trying the case happened to be witnessing the proceedings before the military court. The reason for the continuation of the proceedings by the civil court appear to be based on ground of expediency.
e) The judge was appointed to deal with the case before the civil court, but he was witnessing the proceedings before the military court. It means that this judge who was witnessing Ocalan's trial before the military court either at his own initiative or nominated to do so by the Government has to disqualify himself.
f) If the judge witnessed the proceedings in his personal capacity he should be disqualified for being appointed as a judge to judge Mr. Ocalan. If he was nominated by the Government to witness the proceedings he should be also disqualified. For that reason alone the trial of Mr. Ocalan can be considered to be arbitrary and all proceedings rendered pursuant to such an appointment must be declared to be void".

The above mentioned summary of the report contains serious errors in the conclusion of the points from para. a-f. The conclusions on the prescriptions of the law on State Security Courts are thoroughly and even contrary to the general principles of the Code on Criminal Procedures. Some points depicting the errors of this evaluation are expounded below with respect to the correspondent paragraph:

a) According to the general principles of the Code on Criminal Procedures, there is no need and necessity to prescribe a procedure to be followed in respect of cases that had been within the

process of a judgement and which is not concluded yet with a final sentence of the court. In such cases, the new code of procedure is applied immediately after it takes effect. The mistake of the report is to differentiate the tribunal which tried Mr. Ocalan from the one after the modification of the law. To sustain its wrong conclusion, the report states that the tribunal was military before the modification and after the modification has been a different kind of civil court. This evaluation, as we explained above, is entirely wrong. Since there are no different two tribunals but only one civil tribunal which continued to deal with Mr. Ocalan's case after the modification of the law. As we tried to explain before, in a court of three judges, if one of the judges is ordered to be a military judge, this alone is not sufficient to qualify this court as being a military one. There are several prescriptions in the Law No. 2845 which puts in evidence that these were civil courts. One of them is the fact that their decisions are controlled by the Supreme Court (*Yargitay*). When an evaluation is based upon a wrong qualification, it is evident that the results reached upon these assumptions will be also wrong.

b) When after the modification of the Code on Procedures, the qualification of judges changed and there is no need to restart the trial *de novo*. As we explained above, the new Law of Procedure takes effect immediately after the modification for cases which are under the process of being tried unless the new prescriptions does violate the prerogatives and rights of defence. As it will be explained below, civil judge is not a new appointed judge by the Government. The authors of the report should know beforehand that judges are not nominated by the Government but by an entirely independent body whose constitution is based on the prescription of Turkish Constitutional Law. The point that we are trying to put on evidence is that there was no need to have a special prescription concerning the cases on the process of judgement.

c) As we explained before that the tribunal which begun to deal with Mr. Ocalan's case, is a civil court and the one which completed the phase of trial is the same civil tribunal. The explanations are submitted above.

d) The civilian judge who replaced the military judge is not a judge witnessing the process either by his private wish or appointed by the Government for this purpose. He is a complementary part of the tribunal according to the law. He is called a "reserve judge" who is appointed to the court before the beginning of the trial of Mr. Ocalan's case. This is based on the Article 3 of the Code No. 2845. This reserve judge is not appointed separately. This means that he is not a person who is only witnessing audiences. He is a complementary element of the court appointed by the High Council of Prosecutors and Judges, maybe years ago, before the beginning of Mr. Ocalan's case. The evaluation of the report is entirely wrong about the stand and functions of this reserve judge.

On the other hand it is customary and general legislative practice to have reserve judges in European Courts. In this respect we are referring to the results of Seminars organised by the UN Superior Institute of Criminal Sciences of Syracuse. In the report of syntheses written by Prof. Jean Pradel it is said that:

"Enfin, un peu partout, le legislateur prevoit souvent qu'à côté du tribunal, collégial par hypothèse, peuvent siéger en seconde ligne quelques juges supplémentaires qui assistant

passivement aux débats et qui interviendront en cas d'impossibilité pour les juges de première ligne de continuer à siéger. C'est là une mesure de précaution qui permet de continuer l'affaire sans devoir la reprendre à zéro en cas d'empêchement d'un juge puisqu'il est partout de principe que les mêmes juges doivent être présents de l'ouverture de l'audience au jugement. Cette présence de juges supplémentaires est assez générale. Elle a été adoptée, par example, en France (art. 296 C.P.P. pour la cour d'assises, art. 398 C.P.P. pour le tribunal correctionnel "lorsque le process paraît de nature à entraîner de longs debâts." (Jean Pradel, Procédure pénale comparée dans les systèmes modernes: Nouvelles études pénales, Association Internationale de Droit Pénale, No:15, Toulouse 1998, p.46)".

It is all evident that the role of the reserve judge who is a complementary element of the tribunal has been wrongly evaluated in the report. It can also be seen on the records of the trial that the reserve judge was present during the process. So, it is not a thought or provocation of expediency but a legal procedure which is not absolutely contrary to the principles and requirements of fair trial.

e) Let us summarise this part of the report once again:

"The judge was appointed to try the case before the civil court, but he was witnessing the proceedings before the military court. It means that this judge who was witnessing Mr. Ocalan's trial before the military court either at his own initiative or appointed by the Government for this purpose:"

This summarised assertion of the report contains so many errors that its seems rather painful to touch upon all of them. First of all as we explained before, the civil judge is not appointed by the Government and also not for this purpose. Secondly as we emphasised several times he is not appointed after the termination of the job of military judge. On the contrary he has been a complementary element of the court who will be in charge, in case one of the members of the court will not be able to be present due to indeterminate several reasons. His presence is necessary during the phase of trial for this kind of incidence, which might be occurred. So, there is no problem of appointing a new judge who does not know anything about the case. If it was so, it is evident that the trial should begin *de novo*, but this is not the case.

Thirdly, the reserve judge is not a person following the proceedings by his own will or appointed by the Government for this purpose. He is charged by law to be present during the proceedings in case one of the members of the court will be missing. According to the law in such a case he will be able to associate to the work of the tribunal with sufficient knowledge derived from the different phases of the trial. And this entirely in conformity with the practice of European Courts as we referred to Prof. Pradel's report.

f) Let us again summarise a part of the report:

"If the judge witnessed the proceedings in his personal capacity he should be disqualified for being appointed as a judge to try Mr. Ocalan. If he was nominated by the Government to witness the proceedings he should also be disqualified. For that reason alone, the trial of Mr. Ocalan could be considered arbitrary and all proceedings rendered pursuant to such an appointment could be declared void".

As we explained above in several occasions, neither the civil judge was appointed after the termination of the job of military judge nor he was appointed by the Government to witness the proceedings. He has been always a necessary element of the court whose job is determined by law. Several explanations given above does not need to be reiterated here.

Before we finish these connotations concerning the Working Group's report, we feel the need to put this assertion about the well being of this report.

As a matter of fact, the report does mention in several occasions the qualification of a trial to be in conformity with the principles of fair trial. The principle of fair trial has to be considered as bounding everybody and especially official universal institutions like the Working Group. The case of Mr. Ocalan is now in the process of examination by the European Court of Human Rights. The judges of this court should not influenced or interfered.

Any kind of intervention which has the probability to interfere with the organ of judgement might be evaluated as contrary to the third criterion established by the Working Group in his own report against Turkey. Even tough it is rather painful to make such an observation, it has not been possible for us to assert our concerns on that issue.

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CIVIL AND POLITICAL RIGHTS, INCLUDING QUESTIONS OF TORTURE AND DETENTION

Letter dated 9 February 2001 from the Permanent Representative of Turkey to the United Nations Office at Geneva addressed to the High Commissioner for Human Rights

Corrigendum

Page 5, five lines from the bottom of the page

After thoroughly insert wrong

Page 7, eight lines from the bottom of the page

After this insert is

Page 8

The last sentence should read

Even though it is rather painful to make such an observation, it has not been possible for us not to assert our concerns on that issue.

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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF FREEDOM OF OPINION

Letter dated 14 March 2001 from the Permanent Representative of Albania to the United Nations Office at Geneva addressed to the United Nations High Commissioner for Human Rights

I have the honour to refer to the report of the Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression on his recent mission to the Republic of Albania (E/CN.4/2001/64/Add.1). I enclose an official response from my Government* and request that it be circulated as an official document of the Commission on Human Rights.

(Signed) Ksenofon KRISAFI

Ambassador
Permanent Representative

* Reproduced as received, in English only.

Annex

**REPLY OF THE ALBANIAN GOVERNMENT
TO THE REPORT OF THE SPECIAL RAPPORTEUR
ON THE PROTECTION AND PROMOTION OF THE RIGHT
TO FREEDOM OF OPINION AND EXPRESSION**

The Albanian government powerfully supports the work of the UN in the human rights field, including the mechanisms of the Human Rights Commission. It also supports the work of Mr. Abid Hussain, who for eight years in succession is carrying out the duty of the Special Reporter on the Protection and Encouragement of the Freedom of Speech, and thanks him for the Report "On the situation of freedom of expression in Albania", and also for the useful recommendations presented in this Report.

As it has been stressed in the Report, the situation for the protection and respect of human rights in Albania, including the freedom of expression, has been effectively improved as compared with that of four years ago. The legal framework sanctioning the protection of human rights is of contemporary standards and compiled with the assistance of international specialized organisms. Likewise, in Albania at present there is created a very favorable environment for the protection of human rights. In particular there is to emphasize the achievements with respect to the freedom of press. Although the issue for respecting all human rights has been a primary issue of her program, the Albanian government is conscious that there is a lot to do regarding the respect of these human rights.

Generally evaluating this report, and particularly the recommendations made in it, the Government of Albania finds it proper to make certain remarks, comments and clarifications on the presented facts in the Report, and also to inform of the events occurring after Mr. Hussain's visit in Albania. The inaccuracies in the presented Report might have originated from the data collected from questionable sources, and from Mr. Hussain's short stay in Albania.

Weakness of judicial power and corruption, Par. 9

Referring to the part of the Report speaking about serious issues dealing with the law effects and corruption, we would like to underline that the Albanian government has considered the strengthening of the judicial power and the fight against corruption as one of the greatest challenges, taking to this aim a series of measures. It is worth mentioning the preparation of tne necessary legal framework for the daily activity of the courts, prosecutor's office, and judicial police. By aiming at improving the respect of human rights in general and the right of expression in particular, there have been made a series of changes in the Penal Code and in the Civil and Penal Procedures Code, which are lately presented to the Parliament for approval. In these draft laws there have been especially foreseen the cases of publicity of the judicial process by guaranteeing a transparent process, easily monitored by the press and public opinion, in the function of respecting and correctly applying the law. Likewise, it has been prepared "Rules Book for Administrative Functioning of the Courts" which does not only enable to discipline their administrative activity, but also put at the

disposal of interested people the information of the judicial archives. Through this Rules Book there is created the possibility to best identify and check the activity of judicial administration officials.

The legislative reform of the institutions has been concretized with the preparation of the Law "On Prosecutor's Office in the Republic of Albania" and the Law "On Judicial Police", which have been now passed by the Parliament of Albania, as well as with the preparation of the draft law "On The Supreme Council of Law" and the necessary changes in the Law "On the Magistrate School". This legislation of international standards aims at preparing professional capable lawyers, who would be nominated in the judicial system and the structures of prosecutor's offices and judicial police, thus enabling the raising of the professional level of the activities of these bodies, and consequently the better respect of the law.

With relation to the fight against the phenomenon of corruption, there have been taken measures not only from the legislation point of view but also from the executive point of view. By applying the anti-corruption Platform approved by the Government, there have been intensified and developed checks to the activity of the administration functionaries, judges, prosecutors, judicial police officials and of the judicial administration with the aim of identifying the infringements for profit aims and of taking proper measures

The issue of presenting national reports for applying UNO Conventions on Human Rights. Par. 13

By taking part in a great number of international conventions which treat human rights, and particularly in UNO Conventions, the Albanian government is conscious of her obligation in presenting national reports on the measures of legislative character and how these conventions are implemented in practice. The absence of such reports up to present, derives from the lack of appropriate mechanisms dealing with the preparation of such reports and also from the lack of experience in preparing them. We are pleased to inform that recently a project initiated from the Ministry of Foreign Affairs, UNDP and OHCHR has been put into effect for the creation of national bodies to report before the institutions of main treaties of human rights ratified by the Republic of Albania. In conformity with this report it has been created, with the order of the Albanian Prime minister, the inter ministerial work group for the compilation of national reports, and it has also been opened the coordination office
to the MFA where for several months the human rights OHCHR expert, Mrs. Ewa Brantley has been working.

Journalists maltreatment cases, Par. 34-35

The Albanian government estimates that the cases mentioned in the report represent a concern to be taken into consideration, but she would like to clarify that these cases have occurred when the Albanian state was experiencing tense political events. Moreover, The cases in word are sporadic and do not follow some definite policy of the Albanian governmental authorities. On the contrary, the Albanian government has expressed her pity for these cases and has condemned them forcefully. Today, as it has also been stated in the Report, there is not any press worker detained or arrested in the police quarters. Likewise, not any

journalist is suffering in the Albanian prisons any penalty. The activity of the Albanian State Police and law institutions is completely institutionalized and oriented to democratic standards.

The Public Order Ministry has been rather sensitive to this issue especially for the establishment of legal and ethics relations with the community in general, and with TV and written media workers in particular. There is marked a turning point in this respect after the approval of the laws: "On State Police", " On The Information Right", "On The Classified Information", "On The Press", and other auxiliary acts, where the relations of police workers with the public in general, and media workers in particular, have been institutionalized to democratic standards. This fact has also been identified by the Report, in which for the year 2000, there is observed only one journalist maltreatment case.
Referring in a more concrete way to the above mentioned cases in the Report, we would like to stress that:

For the maltreatment case of the journalists Ylli Dosku and Rexhep Polisi by the police worker of Librazhd Police Commissariat there is started the penal procedure for that policeman, whereas from the Public Order Ministry there have been taken all the measures in conformity with the Discipline Rules. Finally, this case has been solved with the reconciliation of both sides.

The same above attitude has also been taken even for the maltreatment case of the journalists Armand Baze (ABC Radio), Irena Vreto (Republican Newspaper), Aleko Likaj (Our Time Newspaper), Hyqmet Zyma (Albania Newspaper) and Riza Sadiku and Hysen Murati (press transportation workers of Our Time Newspaper)

Concerning the conflict between one cameraman and Tirana Police Director, besides reconciliation between sides, the police official has been removed from his duty.

Regarding the killing of the Albanian Newspaper Journalist, Mr. Ali Ramadan Ukaj, we do clarify that the killing has taken place in July of 1997 and not in July of 1999, as being stated in the Report. This case has been completely cleared up and the author of this crime is experiencing the punishment in prison. The motifs for this killing are not related to Mr. Ukaj's profession.

In the case of Mrs. Karanxha's hurt, Pogradec Television journalist, the police has carried out all its necessary actions, and from its investigation it has been observed that this hurt is not connected with her profession, but is quite accidentally, occurring by negligence. Meanwhile the police is continuing its work for identifying the author.

With regard to the detainment and penal prosecution of Kontact Radio Journalist, Mr. Alfons Zeneli, we reiterate that this detainment has been done for reasons that are not related with the journalist profession.

As for other cases of violence exercised to journalists, they have been performed by unidentified civilians, for whom local police structures have carried out all the necessary appropriate procedural actions following with priority their identification and capture.

Treatment of defamation cases by the Penal Code, Par. 41- 44

Regarding the concern of the Report that "the Government has still the power to threaten and confine the media through the Penal Code of 1995, and mainly through articles 119 and 120 treating the offence of defamation", we clarify that the Penal Code of the Republic of Albania has been compiled with the continual counseling of the Council of Europe. From this viewpoint, The penal Code is to be considered as a law of best international standards, taking also into account the changes recently approved by Albania's Parliament. The offences of defamation mentioned in the Report, are foreseen in the same way as in the penal codes of more advanced democratic countries. Bearing in mind the fact that any individual has his own dignity and the right to protect it, these dispositions may not be interpreted as if they aim at degrading the journalist personality. Likewise, based in the Report statements on the professionalism level of Albanian journalists, the journalists often violate the principles and standards of the ethics of journalism, thus leading them to act against the law.

From the action field view of the above articles of the Penal Code, we clarify not only the journalists are subjected to it, but all individuals committing such like offences, through press and other means of communication. At the same time, based in official data, the majority of the judged cases covered by articles 119 and 120 have been condemned by fines alone, and not imprisonment.

Irrespective of the above stated, The Parliament of the Republic of Albania has scheduled in its program to examine "The Press Freedom Act", which in its core aims at protecting the freedom of information through press and its information sources. Through this draft law it is intended that all offences of defamation when realized through the press, be treated in most of the cases by the Council of the Journalist Order and punished by administrative reprimanding sanctions rather than through court penal procedures.

The issue of the public and private radiotelevision broadcasters, Par. 47-53

Referring to the part of the Report speaking about the license procedure to private transmitters, we make these clarifications:

a) Mention is made that "The Government takes part in financing the public radio television directed by an Independent Managing Council". It is true this institution is managed by one Independent Managing Council, but the Government continues to be co-partner in financing, this even sanctioned by law.

b) The procedure for licensing private radiotelevisions should have begun after the creation of KKRT (National Council of Radio television), and not after the approval of the law No. 8410 "On Public and Private Radio television in the Republic of Albania. Within 2000, there have been licensed 81 national, local, private radio television operators from the National Council of Radio television. In Tirana, the capital of Albania, alone, there have been licensed 14 television operators and 18 FM radio operators. These figures go to show that in Albania nobody has the monopoly on media in general, and on information in particular.

Finance problems of media

The Albanian government has had into consideration the issue of the tax load to be paid by the entrepreneurs and media publishers and consequently accepts the observation made in the report that the finance exerts its influence over the freedom of information. But, we at the same time emphasize that the fiscal load levied on the Albanian media has not had as its goal the discrimination and impediment of their activity. For example, the taxes and payments for the frequencies are comparable with other similar services. Likewise, we find it proper to clarify that irrespective of the legal obligation they had, all the radio television operators under transmission, have actually paid not any kind of taxes or payments for their radio television activity for three years.

With the aim of encouraging the investments in the new electronic media, The National Council of Radiotelevision, after studying the advertisement trade and the possibilities of the Albanian business, reexamined sometimes ago the annual payments these media should pay, and reduced them in the amount of 50%; whereas for the written media, we would emphasize that in February the Government approved a draft law which would exempt the written press from the taxes and duties. This draft law will be examined and soon enough will be approved by the Parliament of Albania.

The minorities issue, Par. 74- 80

As for the situation of the minorities living in Albania, we consider that the Report ought to have mentioned the fact that historically there has been a peaceful and tolerant coexistence between the Albanian population and the minorities, and there has been not any conflict or inter-ethnical collision. As stated in the Report, the Albanian legislation treats the minorities equally with the Albanian population, protecting them from all kinds of discrimination, and enabling them to exercise their rights in the same way as other citizens.

From the point of ethnical minorities, we clarify that at present the Albanian state recognizes as ethnical mincrities: the Greek, Macedonian and Serbian - Montenegro minority. Whereas the Vllachs and Roma minorities, defined in the Report as ethnical minorities are considered by the Albanian State as linguistic groups.

As far as the official figures of national minorities in Albania are concerned, they have been identified and known numerically as a population only in cases of general registration of the national population of the whole country. According to the official information prepared by the Statistics Institute, based in the general census of the population and habitation buildings of 1989, the national minorities figures according to their nations are as following:

Greek minorities:	58758
Macedonian minorities:	4697
Serbian-Montenegro minorities:	100
General Population:	3 182 417 inhabitants

The above stated data are approximate with those published by the Albanian Helsinki Committee, which is a Non- governmental Organization. The non-official figure of 300 000 inhabitants attributed to the Greek minority in the Report, is not at all real, and is related with the tendency of certain circles to define the Albanian population of the Christian Orthodox religion as a Greek minority.

With regards to the citation of a source that the Greek minority in Albania "has insufficient possibilities to study the Greek language", we emphasize that this citation is not real. The Abanian legislation and the measures taken into practice have enabled the Greek minority in the their living areas to learn their mother tongue. Further more, we emphasize that the Greek language in Albania is taught up to academy level. Concerning "the discrimination to employment in public levels" mentioned by the same source, we would like to clarify that the Greek minority takes part in all the governmental levels, something accepted by the Report itself.

The women's position, Par. 81- 87

Irrespective of the defects that my be encountered, in Albania there are no disturbing problems related with the female position, and neither "discriminatory policies or practices for women" as stated in one of the Report recommendations. The way women's position in Albania has been treated in the Report defectively reflects the Albanian reality. In the Report it might have been mentioned for example that the educational level of the Albanian woman is the same with that of the man, a characteristic of the developed countries. Except for isolated cases, in Albania does not exist any discrimination between man and woman with respect to payments level for equal work.

As far as female representation in governmental levels is concerned, we emphasize that in Albania there is a marked improvement as compared to that of some former years. It might be mentioned the fact that in the local power elections of 2000, the number of female municipality heads increased from 3 to 11. In the Municipality Council of the capital of Albania, Tirana, where 1/'3 of the population of Albania live, female members occupy 55% of the total number.

Although the number of female deputies at present represents 11% of the general number of Parliament members, there exists a good political will between the main political forces to increase the number of females in the high power organs. Moreover, the main parliamentary group, that of the Socialist Party has prepared an addition to the Election Code which obliges the parties participating in the elections to present not less than 30% female candidates for the general parliamentary elections.

Recommendations

The Albanian government evaluates all the recommendations presented in the Report defining them as being in conformity with the goals of the Government for increasing the respect level of human rights. Some of these recommendations have been answered in the above written material. However, we emphasize that some of the recommendations have nothing to do with the present day situation in Albania.

The Government has taken into consideration the recommendations for:

- a visit in Albania of the Special Reporter on the independence of the courts and attorneys and the Special Reporter on the violence against women;

- strengthening of the Ombudsman institution;

- re-examination of articles treating slanders and offences;

- enforcement of the law on the information right;

- facilitation of finance barriers for the media;

- time balancing of television programs;

- broader representation in the National Radio television Council;

- propaganda of basic means for human rights and especially for the information right;

- increase of radio television programs treating human rights issues;

- respect of journalistic ethics

The Albanian government considers not real for the present day conditions the recommendations:

- for doing away from the part of the Government with all the infringements towards those individuals who claim to exercise the freedom right of expression;

- for eliminating the discriminatory policies and practices which impede women's emancipation in the Albanian society.